S. HRG. 100-659

NOMINATIONS—APRIL-MAY

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

APRIL 22, 1988

DONNA F. TUTTLE, TO BE DEPUTY SECRETARY, DEPARTMENT OF COMMERCE

APRIL 25, 1988

ELAINE CHAO, TO BE A COMMISSIONER, FEDERAL MARITIME COMMISSION

MAY 10, 1988

LEMOINE V. DICKINSON, JR., TO BE A MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD

MAY 19, 1988

REAR ADM. CLYDE T. LUSK, JR., TO BE VICE COMMANDANT, UNITED STATES COAST GUARD

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DONNA F. TUTTLE, TO BE DEPUTY SECRETARY, DEPARTMENT OF COMMERCE

FRIDAY, APRIL 22, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV presiding.

Staff members assigned to this hearing: Sally Susman, Loretta Dunn, professional staff members; and Macky Ayers, minority professional staff member.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. The nomination hearing will come to order.

This morning the committee is going to be considering the nomination of Donna Tuttle to be Deputy Secretary of the Department of Commerce. The President of the United States has submitted her name to succeed Clarence Brown.

Ms. Tuttle has appeared before the Commerce Committee a number of times. In January 1984, the committee considered her nomination for a position of particular interest to me as Chairman of the Foreign Commerce and Tourism Subcommittee, and that was her position as Secretary for Travel and Tourism.

Before her appointment to USTTA, the position had had two directors in two years, and it had remained vacant for almost another entire year. Mrs. Tuttle enormously strengthened the position of Under Secretary. She brought stability of leadership to the USTTA where it had not had it before, and she earned the respect of both those in government and private industry leaders alike.

We are considering Mrs. Tuttle today for a very, very important position; the Deputy Secretary serves, in fact, as Acting Secretary in the Secretary's absence. If confirmed, Mrs. Tuttle, along with Secretary Verity, would oversee the administration of a vast array of very important functions of the U.S. Government. I will reveal my bias very early by saying that I think Mrs. Tuttle will bring strong management skills to the job of Deputy Secretary.

She has had fine government experience, has strength as a manager, and she has earned an excellent reputation on the Hill, with the administration, and with the private sector. I think she has shown great energy, unusual energy and great enthusiasm in her service. Other than that, I am entirely neutral.

I would, before calling on Senator Wilson, point out that Senators Hollings and Pressler have statements for the record, and yesterday was Mrs. Tuttle's birthday.

Senator Wilson.

OPENING STATEMENT BY SENATOR WILSON

Senator WILSON. Mr. Chairman, about the only thing I can add to that is to introduce her husband and her two daughters, which I do with pleasure. They are here with, I think, understandable pride. Robert Tuttle and their two daughters, Tiffany and Alexandra, who happily bear a striking resemblance to their mother.

Mr. Chairman, your introductory comments make it difficult for me to do what I am supposed to do, and I anticipated that because, as the lyric to that old song goes, it seems to me that we have heard this song before. You and I have sat in these identical positions on a prior occasion, at the time of confirmation of Mrs. Tuttle as the Under Secretary, so I knew of your feelings about her which, as you know, I share.

But I would have to say that even as an admitted partisan, the performance that she has brought to the job of Under Secretary has met, if not exceeded, the expectations of her enthusiasts and that is a very considerable statement.

You have correctly indicated that she has performed with enthusiasm and energy, and won recognition for her performance in both the public and the private sector. That is certainly the case. Since we last sat here, she has been recognized as the woman of the year by numerous travel organizations and has won plaudits from her colleagues. She does have very strong management skills.

In preparing for today, I learned something about her which I had not known. I should have known it, and that is, in a prior incarnation, she was a very distinguished and youthful teacher. She was the Chairman of the History Department at the Samuel Gompers Junior High School in Los Angeles, and true to form, was recognized as an outstanding teacher and given the honors class to teach.

I think she has something to teach all of us, and that is that a woman of not only high intelligence and high energy but also genuine dedication to what she is doing can make a very considerable difference in a very short period of time.

As you point out, the role that she has filled with such distinction is one that more often than not even this committee, which has jurisdiction in that area, had been inclined to look at with some but not an enormous amount of interest. I think she has shown us the importance of the job and has brought with her a relatively small budget and a tremendous return on that investment. Clearly, the private sector, which has benefited so enormously from her efforts, recognizes that that is true.

So it is with particular pleasure and a feeling of complete vindication that you and I can say what we are saying this morning as we anticipate that she will continue that same performance in her new role as Deputy Secretary.

As you pointed out, it is the number two position in the Department of Commerce, and I will not take the time of my colleagues to explain what they already know. The fact is, this committee works most closely with the Department of Commerce in all of its different aspects. We have reason to be concerned with the kind of leadership that the Department will enjoy. In Donna Tuttle's case, I think we have every confidence, and every justification for that confidence, that she will continue to bring truly distinguished leadership.

So I will not take more of the committee's time. You have some indication of how I am going to vote, I think, from what I have said.

Senator ROCKEFELLER. Thank you, Senator Wilson, very much.

I would call on members of the committee who might have comments.

Senator Exon?

OPENING STATEMENT BY SENATOR EXON

Senator EXON. Mr. Chairman, I have no comment other than to say that I have been extremely supportive and supporting very openly Secretary Verity, and I think Ms. Tuttle does an excellent job in helping him. As she said in her answer to her first question, I will do all that I can for Secretary Verity in support of the President's trade and economic policies.

I enthusiastically support this nominee, and I am anxious to have her confirmed. I hope she would take back the recommendation to the Secretary and the President that his trade and economic policies would indeed be enhanced if he would not veto but sign the trade bill.

With that, I say that when the vote comes, I enthusiastically support her position. She is obviously well qualified to fill it.

Senator ROCKEFELLER. Senator Kasten.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you.

I am pleased to welcome Donna Tuttle before us today. Many of us know her from her post as the Under Secretary for Travel and Tourism, as Senator Wilson just said. All of us have had the pleasure of working with Donna Tuttle in her present capacity, and I am pleased that the President has nominated her for the increased duties and responsibilities of the Deputy Secretary of Commerce.

Since December 1983, Donna has shown herself to be an able and, I might say, a resourceful administrator in leading the U.S. Travel and Tourism Administration through some difficult times. I am pleased that Secretary Verity and the President of the United States are drawing on her experience and knowledge in the department, nominating her to the second highest position in the Commerce Department.

I enthusiastically support this nomination. I hope that this committee will move quickly and that the Senate will move quickly toward confirmation. I thank you, Mr. Chairman, for scheduling this hearing and hope that we may approve in the committee this nomination as quickly as possible.

Senator ROCKEFELLER. Thank you, Senator Kasten.

Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator McCAIN. Thank you, Mr. Chairman.

I appreciate the opportunity to make a couple of remarks.

I warned the nominee that this hearing probably would be a grueling experience for her, so I think she has had to do a lot of homework in the last few days to be prepared for some of the difficult questions that have already been posed to her.

I also am strongly supportive of her nomination despite the fact that she originally comes from the State of California, which stole all of Arizona's water, as you know.

So with that understandable bias, I am nonetheless still very much in favor of this nominee.

I also think it is good for us to have a person in this very important position who has proven leadership and experience within the Commerce Department. All too often we have a tendency to take people from without and it takes them a long time to get up to speed. I think that this nominee will hit the ground running. That is particularly important in the critical times that we are facing as far as our role in commerce is concerned, not only throughout the world, especially in the Soviet Union, as was referred to earlier.

I have every confidence that Ms. Tuttle will do an outstanding job. I appreciate the Chairman taking his time to hold this hearing at this very busy time in our schedule.

Thank you, Mr. Chairman.

Senator ROCKEFELLER. Thank you, Senator McCain.

[The statements and biographical sketch follow:]

OPENING STATEMENT BY THE CHAIRMAN

On April 14, the President nominated Donna Frame Tuttle to succeed Clarence J. Brown as Deputy Secretary of Commerce. Mrs. Tuttle, who has served as Under Secretary of Commerce for Travel and Tourism, is well known to many members of this Committee.

In January of 1984, the Committee supported her nomination to be Under Secretary. Mrs. Tuttle has done an excellent job in her current position. Over the last four years, Mrs. Tuttle has worked diligently, travelling around the world, to bolster American tourism and the prestige of her United States Travel and Tourism Administration. She has earned the respect of her colleagues, the Congress, and private industry leaders.

The position of Deputy Secretary is of great interest and importance to this Committee. If confirmed, Mrs. Tuttle would serve the Secretary as his principal deputy. She would serve as the acting Secretary in the Secretary's absence and help him in his daily oversight of agencies within the Department.

Mrs. Tuttle is known to be a good manager and effective communicator. She has demonstrated enthusiasm for and dedication to government service. I believe she has the requisite qualifications to be a successful Deputy Secretary and I support her nomination.

OPENING STATEMENT BY SENATOR PRESSLER

Mr. Chairman, I unfortunately am not able to attend this hearing due to a conflicting meeting at the Pentagon. I wish I were able to be here this morning, though, because I have developed a deep appreciation for the abilities and commitment of Donna Tuttle during her tenure as the Under Secretary for Travel and Tourism at the Department of Commerce.

Ms. Tuttle has been a true advocate for travel and tourism in the United States since she was appointed Administrator in 1983. Tourism is this nation's third largest industry. Despite its importance, the U.S. government spends very little to promote international tourism, compared with the tourism efforts of most other developed nations. The promotion activities we do engage in are coordinated by the

USTTA. Ms. Tuttle has done a super job as administrator of that agency in promoting international tourism.

I have been particularly impressed recently with USTTA's regional promotions. Through regional promotions, all areas of the country can benefit from increased foreign awareness and travel. For instance, USTTA has recently been working with the Old West Trail Foundation to encourage tourism in the Missouri River area, including my home state of South Dakota.

While I was somewhat skeptical of Ms. Tuttle's qualifications when she was originally nominated for Administrator of the USTTA, she has most definitely won me over since then, I believe she is extremely well suited to be Deputy Secretary of Commerce, and I wish her the best in that position.

Mr. Chairman, thank you again for holding this hearing. I heartily recommend approval of this nomination.

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
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W. ALLEN MOORE, MINORITY CHIEF OF STAFF

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Tuttle (Last) Donna (First) Frame (Other)

Address: 3216 Volta Place, N. W. Washington, D. C. 20007 (Current residence)

USTTA, Room 1865, Dept./Commerce Washington, D. C. 20230 (Business)

2. Position to which nominated: Dep. Sec. of Commerce

Date of nomination: April 14, 1988

3. Date of birth: April (month) 21 (day) 1947 (year)

Place of birth: Los Angeles, CA.

4. Marital status: Married

Full name of Spouse: Robert Holmes Tuttle

5. Names and ages of children:
Tiffany Noel, Age 11
Alexandra Christina, Age 9

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Marlborough School	1959-1965		
Univ. of Sou. CA.	1965-1969	BA	1969
Univ. of CA. at L. A.	1969-1970	Secondary Teaching Credentials	1979

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
10/75	11/79	Self-employed	166 S. Greenfield Los Angeles, CA	Decorator
9/70	6/75	Los Angeles Unified School Dist.	Samuel Gompers Jr. High 112th St. & San Pedro Los Angeles, CA	Teacher
8/69	9/70	Lily Pulitzer Dress Shop	Canon Dr. Bev. Hills, CA.	Sales help
6/69	8/69	All American Village Day Camp	Sierra Mts., CA.	Camp Counselor
6/68	8/68	"	"	"
6/67	8/67	"	"	"

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

12/83 to Present	Under Sec. for Travel & Tourism, Dept. of Commerce, D.C.
7/82 - 11/82	Carol Hallet Campaign, State Finance Chairman
11/80 - 7/82	Mike Curb Campaign, State Finance Chairman
11/79 - 11/80	Reagan Campaign, State Speakers Bureau

9. Political affiliations activities: List ~~all~~ memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Membership in the Republican Women's Party - Virginia - 1983-84

Republican Women's Club, Santa Monica, CA. - 1979-80.

Pete Wilson for Senator - 1980 - $1,000.

David Armor for Congress - 1982 - $1,000.

John Rhodes for Governor of Arizona - 1988 - $500.00.

Ronald Reagan for President - 1979 - $1,000.

I have made numerous contributions in the past 10 years. To the best of my knowledge, I made these personal contributions. Unfortunately, I did not keep a record of my personal checks on this matter.

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

NAME	TYPE	FROM - TO
DONNA F. TUTTLE		
Natural History Museum - Alliance Board, Member of Board of Trustees	Non-Profit Organization	11/80 - 12/82
Coro Foundation	Non-Profit Organization	11/81 - 11/83
John F. Kennedy Center - Board of Trustees	Non-Profit Organization	11/82 - 11/83
The Womens' Forum No office held	Non-Profit Organization	5/84 - Present

ROBERT H. TUTTLE

Member of the Investment Committee through December 1982 and acted as Plan Administrator through December 1982 for the Profit Sharing and Retirement Plan of:

Employee Profit Sharing and Retirement Plan of:

Holmes Tuttle, Inc. and Related Companies
Jim Click Nissan, Inc. (previously Beverly Hills Lincoln-Mercury, Inc.)

Inactive participant in the Profit Sharing and Retirement Plans of Holmes Tuttle, Inc. and Related Companies. Leave of absence status from 12/82 to present.

Carl Curtis School Chairman of the Board	Educational	1977 - 5/82
Boy's Club of America National Board of Directors	Non-Profit Organization	1980 - 5/82
Young Presidents' Organization Association, University of Southern California Member	Non-Profit Organization	1975 - 11/82
Friends of Nancy Hanks Center, Inc. Board of Directors	Charitable/Volunteer Organization	1978 - 11/86
University of OK Fred James Art Institute Member of the Board	Non-Profit Organization	1/87 - Present

Senator **Rockefeller**. Ms. Tuttle, maybe you would wish to give your statement or make comments, either way.

STATEMENT OF DONNA FRAME TUTTLE

Ms. **Tuttle**. I do have a statement and thought I might read it.

Thank you very much, Mr. Chairman, and I thank you, Senator Wilson, very much.

I am delighted to appear before this distinguished committee today and honored to have been asked by the President to accept his nomination as Deputy Secretary and assume a wider role on Secretary Verity's management team at the Department. I would like to take a few minutes to talk about my approach to this historic department, now celebrating its 75th anniversary year.

In my four years at Commerce, I have come to appreciate the meaning of the sweeping mandate given to our department. Never before has its mission of fostering, promoting and developing the foreign and domestic commerce of these United States been more important or more worthy of public recognition. From NOAA to the National Bureau of Standards to the Census Bureau and the International Trade Administration, to mention only a few, the department has evolved dramatically from its early days when Commerce Secretary Oscar S. Straus thought of his job as requiring only a couple hours of work a day and no other qualifications than to be able to put the fish to bed at night and turn on the lights around the coast.

Times have certainly changed, and the department has changed with them. Under the leadership of Secretary Verity, we are moving forward on a variety of fronts which I believe can have a positive impact far beyond the end of this administration. By necessity and temperament, my response to the issues facing us in 1988 will be a direct one. We are definitely not slowing down.

I intend to support innovative policies that will continue the recent promising growth of U.S. exports. I am very encouraged by such new ideas as Secretary Verity's EXPORT NOW cooperative program with the private sector. As Under Secretary for Travel and Tourism for the past four years, I know first hand the enormous potential for increased overseas sales in many product and service areas, and remain proud of the role I played in the development and execution of our trade policy.

In the tourism account, for instance, we will have at least a $1.7 billion surplus with Japan in 1988. There is no question that we must keep the pressure on to encourage exports. Up until now, most export growth has been fueled by the dollar's decline.

Let there be no mistake. The weak dollar's effect on exports has been extraordinary. In 1987, export volume rose nearly 20 percent from 1986, and this trend has continued this year.

What we need to do now is to do more than just ride the falling dollar and find aggressive ways to expand export trade. EXPORT NOW is part of that approach.

The department is preparing to judge the first national quality award competition, an honor we hope will promote quality awareness by recognizing achievement of U.S. companies and publicizing successful quality manufacturing strategies. The Malcolm Baldrige

National Quality Award will be presented in November. Secretary Verity has referred to this award as the Nobel Prize for Quality, and we would like it to become symbolic of a new national obsession, from the CEO to the shop floor worker, with the quality of the products this country produces.

I plan to contribute to the Commerce Department's role in the President's proposed worker readjustment program which seeks a closer partnership with business and education interests to promote changes in the educational system which will serve the needs of industry in the 1990s and beyond. As one who has changed careers several times, I know personally the need to keep learning throughout our lifetime. I also know some of the pressures placed on working parents and will seek establishment of a self-supporting child care center for employee use in the Hoover Commerce Building. As a manager, I have learned that the bottom line on productivity is helped by understanding an employee's family life.

Finally, of central importance to me as Deputy Secretary will be my role as chief operating officer, the hands-on manager of the department as a whole. I believe my strong management skills gained from several years in the private sector, and more recent leadership of USTTA, provide the requisite tools for effectively administering the duties of Deputy Secretary.

As a manager, I also expect to work closely with Congress and maintain the active liaison role that a deputy secretary should have with Capitol Hill.

In this regard, the challenging policy issues facing the department for the remainder of this administration are matched by the rewarding prospects of being directly involved in a management drive begun by Secretary Baldrige and continued by Secretary Verity to bring the Commerce Department services into the 21st century. Excellent modernization initiatives are taking place throughout the agencies. The Patent Office's plan to automate application processing and patent search activities with the goal of reducing patent waiting periods to 18 months have already begun to show significant progress. A more accurate and useful decennial census is promised in 1990 using computers and forward planning techniques. Quicker approval of overseas sales by U.S. companies is resulting from electronic transmissions of export licenses. And even weather forecasting is being advanced with the installation of next generation radar and aggressive use of satellite data.

In conclusion, I hope to use the next nine months to assist Secretary Verity in finding creative, cooperative approaches to the issues we face. The Federal government alone does not have the resources or ingenuity to provide all the answers. In my experience, government functions best as a facilitator, removing barriers and communicating information which allows the vigor of workers and industry to grow and prosper. One of the reasons I enjoy government service is that it calls so directly on these same skills in myself as a facilitator and communicator. I hope you agree and confirm my appointment to this very exciting opportunity to serve the public good.

Mr. Chairman, thank you for your attention, and the Members. If favorably reported by this committee and confirmed by the full

Senate, I look forward to working both with you and your colleagues in Congress on the many important tasks ahead.

Thank you very much.

Senator ROCKEFELLER. Thank you very much.

I might start off by asking, is there somebody who is being considered for the position at USTTA?

Ms. TUTTLE. There is someone who is being considered. It is someone within the Department of Commerce and who is very well qualified, and I think they are just trying to work out that person's papers and all. That is the only hesitation on announcing that person.

Senator ROCKEFELLER. So it might be a matter of a few weeks?

Ms. TUTTLE. That is right. I feel very good either way, though, because we really do have an excellent Under Secretary with Eric Peterson and George Calse, who is our new Assistant Secretary for Marketing who has been on board, and I feel very good about the running of the agency.

Senator ROCKEFELLER. The Foreign Commercial Service I think is one of the most important offices that the Commerce Department has, and I would like to hear your views about it, you know, the whole question of trying to encourage exports, concentrating on medium sized business. The IBMs and the duPonts do not need this, but there are, not only in my state, but elsewhere, there are so many businesses which could be exporting. As you know, traditionally, we have looked at our own market as being so large that we have not had to. Exporting is doing better now. But it is doing nowhere nearly as well as it might be doing, in my judgment, I think is very important, and thus the U.S. and Foreign Commercial Service is important and I would like to hear your views on it if I might.

Ms. TUTTLE. I agree with you. I think the Foreign Commercial Service is extremely important if we indeed want to export more.

I think in the past a great deal of emphasis has been placed on the overseas operations of the Foreign Commercial Service, and I think in the last recent year we are really taking an in-depth look at the domestic operation.

One of the things that we are doing is going to be automating the actual information process that the Foreign commercial Service will be distributing to businessmen. This is a management system called CIMS which will actually have on computer all of the overseas data and information which will be available to businessmen to come in and find out about any market or any product, the availability of that product, and how to sell in that market.

That should come on line, the computers are there, the information is stored, it should be operational probably around the beginning of this summer. I think that will help a great deal the domestic because I think where the weakness, if there is one, I think it occurs on how do we get the information that we are collecting in the overseas markets, how do we get it actually to the businessman? And that is what we are trying to concentrate on.

Senator ROCKEFELLER. I am fascinated by our government process—Senator Exon made reference to it—with respect to trade. I think we have a situation now wherein the trade bill will pass, has passed the House, will pass the Senate, will probably, if the President does veto it, be overridden by the House, probably will not be overridden by the Senate, which would then put us back in the position that we have been in historically, that is, a country without a trade policy. The Japanese, the Brazilians, others will once again be able to look at the United States and talk about a "paper tiger" as far as trade is concerned.

Now, I am not going to ask you your views on plant closings or on the trade bill in particular, but it grows even more complicated. There was a poll in the papers this morning saying that Vice President Bush and Dukakis, should he be the nominee, are virtually even. Therefore, does that mean that when it comes to a presidential veto or signing of a bill which has plant closings, out, or in, would that weigh on it as a political matter?

And the whole concept of the way we make trade policy in this country—and I think it is the fault of both political parties, but I think it really is bad. Since 1982 we have basically been saying to the Japanese and others where we do not have entry to some areas where we should rightfully have entry, where we could be competitive, that you had better start doing something because we have got this trade bill coming.

I have made four or five trips to Asia in the last two or three years, and I tell the Koreans, the Taiwanese, the Japanese, watch out, here comes a trade bill, we mean it, you get your act together. And they do not really seem to be too concerned about that because historically the United States has never put its foot down and never said we really mean this.

So here we have a situation where we do not know what will happen. If it is vetoed and if the veto is sustained, we are a country without a trade policy.

And I would be very interested, Ms. Tuttle, in your thoughts generally about our trade policy.

Ms. TUTTLE. I think no matter what party you belong to, I think it is frustrating on either side, the situation about the trade bill, and I agree with your feelings very much. I think there are a lot of positive things in that trade bill, and I think it would be good for the United States to have a trade bill, and it is discouraging to see us not agree on all of the provisions.

I also think it has further implications perhaps maybe on the Canadian Free Trade Agreement, and I guess you have to then ask the question when are we going to finally start resolving and settling some of the issues and achieving some of the further agreements that we want to, whether it is a free trade agreement or a GATT agreement, you know, next December.

I think it has been overall a healthy, good debate for this country to go through. Five years ago I do not think you saw any of us—you certainly did not see the man on the street really discussing trade, and I do not think it was as hot of an issue as it is now.

So if there is anything positive to say, I think everyone is very much aware, it has gotten a great deal of publicity. I think we really have educated the consumer that trade is very important to this country, that people play a part in it, and I hope we can resolve this issue, I guess is the bottom line.

Senator ROCKEFELLER. Good. I thank you for that.

And I agree with you, incidentally, on the Canadian Free Trade Agreement. I think if the trade bill goes down, it will have severe repercussions for the FTA. I cannot prove that. I mean, I suppose you could argue that if this one went down, it might make it more possible for us to do the other, but I do not think so. I think the politic works negatively towards the Canadian agreement.

Do any other, Senator Kasten, Senator Exon, do you have any questions?

I have a few more, but I do not want to take more than my share of time.

Senator Exon. I just have one question that I think the Department of Commerce is going to be involved in in the future, and I would like to get Ms. Tuttle's opinion on it from her perspective, and that has to do—I agree with the remarks made by the Chairman with regard to the trade bill, and I think it is most unfortunate. I worked very, very hard with the Administration. We were able to make some agreements on certain protectionist matters, and matters dealing with who should have information with regard to proposed foreign takeovers and all those kinds of things. But we reached a total impasse with the administration officials when we got down to this matter of plant closings.

I happen to think the trade bill is much more important than plant closings, and I do not feel particularly strongly one way or the other about that. But I think that if the President does veto this trade bill, it is going to set up a series of intractable positions that people are going to take, and I think this could have an effect on the Canadian free trade agreement.

And I am wondering if Ms. Tuttle is aware and if the Department of Commerce is aware of some potentially troublesome matters that the agriculture community is bringing up with regard to what they think is unfair treatment of agriculture in the Canadian free trade agreement. It might be very fair, it might be good for the non-agricultural sector but probably not as good for our family-sized food producers.

Is the Department of Commerce aware of that concern, and what, if any, justification is there for what I think is increasing signs of trouble for that bill, especially if the present trade bill is not signed into law by the President?

I am not saying that should be the case, but I am stating what I think might be a situation that is going to make it difficult to get any type of trade legislation through, and I was just wondering what Ms. Tuttle felt about the trade bill with Canada, especially with regard to agriculture.

Ms. Tuttle. As far as myself, I am not briefed enough on the particulars of the agricultural parts of the Canadian Free Trade Agreement, but I will say this, that it clearly does not answer all of our questions and problems in trade. There are other areas, I think, too, that need a little bit more work.

But what I think it does set up is working groups that can handle these issues that will meet continually to discuss these kinds of issues, that if there are any remaining tariffs or subsidies, that we can address those issues in a working group.

So I think it would clearly set up the mechanism to allow more talk on these subjects.

It also clearly, from what we see it, in most sectors, we are much better off than we were originally without the bill. So we are obviously very, very supportive of the free trade agreement.

I think bottom line in this discussion of trade bills is I agree with you, I want to show that we are tough, too. I just do not want to get too protectionist, and if we could agree on how to be tough and not too protective, I suppose that that would solve all of our problems.

We hope very strongly that the Canadian Free Trade Agreement will go through. It has important implications for the Uruguay Round and for the GATT process, and we will be working very hard on that effort.

Senator EXON. How much consultation is there between the Secretary of Commerce and the United States Trade Representative on matters such as the Trade Bill that the President has threatened to veto or said he will veto, and the free trade agreement with Canada?

Do those two individuals and their departments work very closely together, somewhat closely together, or not at all?

Ms. TUTTLE. I think they work very closely together, basically the two secretaries meet at least once a month for breakfast or lunch, if not more often, to discuss particular matters. In addition, they have what is called a quad breakfast every Tuesday morning, and they certainly see each other in addition to the Cabinet meetings.

On a staff level, we have the trade review policy group that meets all the time and actively discusses, in addition to phone calls—I mean, USTR and Department of Commerce have traditionally worked very, very closely, and I think there is a great deal of respect between Ambassador Yeutter and Secretary Verity. We both have the same goals.

Senator EXON. That is good, and I thank you very much.

Senator ROCKEFELLER. Senator Stevens, do you have any comments that you would like to make or questions that you would like to ask?

Senator STEVENS. No. I am getting a bad cold here this morning, and I just dropped in briefly.

Senator ROCKEFELLER. To find a place to sit?

Senator STEVENS. Yes, and to say hello to Ms. Tuttle and to mark me present as supportive of her nomination.

Senator ROCKEFELLER. Thank you, Senator Stevens.

It is interesting to me the way the words "protectionism," "free trade," "fair trade," et cetera, are used. I am interested in your feeling of what is protectionism. In other words, it seems to me one has two ways of doing things. The Japanese, the Koreans, the Taiwanese, the European Economic Community certainly respond best to pressure. To put it another way, they do not respond unless there is pressure.

Now, what is pressure? Pressure is conversations with the President of the United States, between the Prime Minister of Japan and the President when they meet. But that does not happen very often.

The USTR obviously plays a very basic role. Commerce traditionally, at least in the number of years that I have been here, which is not very many, Commerce, starting with Secretary Baldrige and Secretary Verity, has been very strong on trade and opening up markets.

Now, Jim Exon used the phrase of opening up markets. That is the way I tend to think of our trade bill. I am not asking you to comment on the trade bill. I am asking you for philosophy.

Another way to approach it, is if you say if you do not open up your markets, you are going to do some things to retaliate. Now, as soon as that is said, everybody says it is protectionism. On the other hand, if you do not say that you are going to do something to retaliate, the Japanese, whose economy is booming, do not respond, as far as I know, there is no end to the upward curve of that economy. I think it could just keep going—Korea the same, Taiwan the same. For a while it has been the threat that we were going to pass a bill that caused the Taiwanese to lower several thousand, in fact, of the tariffs, but the Japanese and the Koreans are far tougher.

Now, what is protectionism? Is protectionism just sort of acting tough, or is it the threat that if markets are not open, you will consider responding? Legislation never says that you have to because there are always loopholes, national security, national economic interests, debt position or whatever that the President can use. But it is a forceful mechanism.

So when you say you do not want to see protectionism but you want to see us tough on trade, what do you mean by protectionism?

Ms. **Tuttle**. Well, I use it even different than what you have described. I would say import quotas are protectionist measures which protect our industries, and in some cases they have actually worked. If we have an industry that has been injured due to a large number of imports coming in, such as the steel industry was, and we put on quotas, that has given the steel industry time to recoup and to go back and streamline and change management and become more competitive again.

That happened to have worked with that industry. A lot of times when you put on protectionist measures, the industry really does not get healthier, but to me can also tend to get even sloppier in the fact that it gets very used to those protections. That is how I use the word "protectionist," not in terms of retaliation and not in terms of getting tough with open market access.

I think that we in the construction talks at the Konsai Airport with the Japanese, I think we were tough on those issues, and I think we put pressure on the Japanese to let our construction companies come in and bid on those projects. I think we ought to do more of that. I agree with you that we ought to take a tough line, and I think those kinds of bilateral negotiations and talks on different sectors can produce a lot, and I think the Japanese knew that we were very serious about that particular issue, the construction industry.

Senator **Rockefeller**. Part of the reason they knew we were serious was because the Congress had passed a law saying if they did not let us in, they could forget it over here, and when the Washington Metro contract came up and the Japanese bid the lowest, they did not get it.

Ms. **Tuttle**. That is true.

Senator **Rockefeller**. Well, I think you will uphold the traditional Commerce Department sense of strength on trade, and I think that is important because every administration speaks with many voices; the National Security Council, the State Department traditionally are looking at such a broad relationship that they do not consider trade to be that significant. Therefore, on a case by case basis they always say, well, do not disturb the relationship, there are broader meanings for the relationship, so let this one go by.

Now we have come to a point of a $170 billion trade deficit, and I am not sure that trade is less important than any other incremental part of a relationship.

If I could ask one more question, I have always been disturbed by the lack of aggressiveness on the part of American industry in seeking out Japanese technical information. The Japanese, for a generation, have been reading everything that we put out in the private and the public sector, anything that is not classified, and they have been able to leapfrog some of the mistakes that we have made because they have simply read everything we have done, and that is fair, we make it available.

Now, it also so happens that the Japanese are doing pretty well themselves these days and have been for, in fact, quite a long time. They put out 10,000 technical journals every year, all of which are available, none of which are translated, maybe 100 or 200 of which are translated, and contain all of the research, a lot of the research which they are doing of enormous potential value to our private sector. Our businesses with our huge domestic market, strike me as not having been very aggressive in going after this information. I mean, information is tomorrow's trade results. You have got to have it.

We passed in 1985, and I pushed it hard and it got through, a Japanese translation bill. In the Department of Commerce there is a group which is meant to be causing this to happen. They are underfunded, of course, not only by us but by you, but they are at least meant to be reporting as to what they are doing. There are some very good people working there, including Jacob Javits' daughter.

Commerce has not met its deadline at all on staffing or on the reports. I was meant to have a report, or this committee was meant to have a report last August. It was said no it will come in November. It did not come in November. It has not come yet.

Now, I think that is symbolic of some of our competitive problems in this country. I consider the Japanese technical translation act a very important symbolic act, and real act. That is, the United States government taking the posture of saying to business, at cost—you know, they pay for it, business pays for it—we are doing the translating. Here is some Japanese information which has been translated into English. You, medium sized businesses and others, do not have the capacity to do that translating. In fact, this one group which does do translating went out of business in the last week or so, or announced they were going to go out of business because they did not get enough corporate inquiries, which I think is really stunning and a really disappointing reflection on American competitive instincts.

In any event, I think it is very important for Commerce to plow forward on this. There is a division within Commerce, and I want to know if I can count on your support for the Japanese translation office at the Department of Commerce, and any thoughts that you might have about that.

Ms. TUTTLE. Let me begin by saying yes, you have my 100 percent support because I do agree with the purpose of the act and the program that is in the Department of Commerce.

I understand that they have produced three reports. I understood that one of them had already come up to the Commerce Department, which you can bet that I am gong to find out why it has not because I was told it had come up to the committee. There are two other reports that should be coming up. One, in fact, is supposed to be already published and being distributed through NTIS.

This is something that I have gotten into because it certainly relates to the bigger issue, which is one of our weaknesses in the transferring of technology from research labs and universities into business and into commercializing a product, and it is clearly, while we are number one on R&D, this is a big problem in the United States, and clearly the role of the Commerce Department to deal with this issue. And clearly that is what your act does, and the Japanese do produce very, very good materials and literature.

So I know of it and am very interested in it and supportive, and will certainly find out why at least that first report did not come to you. But we will get those up as soon as possible and let you know about that.

Senator ROCKEFELLER. Thank you, Ms. Tuttle.

Are there any other questions?

If not, I want to say that I do not have any further questions. As I said, I have great confidence in you—a lot of references have been made to your management skills and ability and strength, and I think that is extremely important, particularly in relation to the hands-on responsibilities that you will have in the Department of Commerce, and I really think you are going to do very well in this committee.

Thank you for coming.

Ms. TUTTLE. May I just thank you for your support for USTTA? It has been wonderful. It has made a difference with our agencies. We are looking forward to a conference in your state in another week, a little over a week, and also would like to thank the committee for moving this so rapidly, to have this hearing so quickly.

Thank you very much.

Senator ROCKEFELLER. Thank you, Ms. Tuttle.

The hearing is adjourned.

[Whereupon, at 10:13 a.m., the committee recessed subject to the call of the Chair.]

[The questions and answers follow:]

PREHEARING QUESTIONS OF SENATOR INOUYE

Question 1. If confirmed as Deputy Secretary of Commerce, what do you expect will be your most significant contributions to our national policy? In brief, what goals and objectives will you bring to this position?

Answer. My principal goals as the Department's day-to-day manager will be to ensure that Commerce has the necessary resources to perform each of its important functions, to ensure that the Department is organized in a manner that reflects the importance of these responsibilities and allows them to be performed efficiently, to ensure that we maintain open and cordial relations with the Congress, and to perform whatever other services I can for Secretary Verity in support of the President's trade and economic policies.

On a more specific level, it has become increasingly clear that the Department can and must take an active role in promoting scientific and technological progress; assuring that the benefits of the vast federal commitment to research and development are transferred to the private sector to create new products, processes, industries and jobs; and to encourage U.S. industry to emphasize quality in the goods and services they produce. I know that this is a matter of great importance to the members of this Committee and to many others in Congress.

Question 2. Why do you want to be Deputy Secretary of Commerce?

Answer. More and more people are coming to appreciate the vital role that Commerce plays and will continue to play in assuring the Nation's economic welfare. American industry will continue to depend on the fair and effective administration of the trade laws. Business and economic planners will continue to need the economic and social data Commerce generates. They will look to us to promote scientific and technological growth and the transfer of federally-funded technology to the private sector. Those who invent and take risks in bringing new products to the marketplace will continue to look to Commerce as advocates for increased intellectual property protection at home and abroad. Those who care about the earth's physical environment and ocean resources—and that should include everyone—will continue to look to us to unravel the Earth's mysteries. And these are just a *sample* of what Commerce does.

The President and Secretary Verity have offered me a rare opportunity to be a part of this, to use my management skills and judgment in helping these agencies fulfill these vital missions, and to help Secretary Verity leave behind a strong Department that is more than ready to face the challenges of the next century.

Question 3. If confirmed as Deputy Secretary, you will be involved in trade policy. Do you believe President Reagan's trade policy has been successful? If so, how do you explain the high trade deficits that have been accumulating since 1980?

Answer. President Reagan's trade policies have been and continue to be highly successful.

In September 1985, the President launched a Trade Policy Action Plan which included such initiatives as U.S. participation in the GATT Uruguay Round, the U.S.-Canada Free Trade Agreement, U.S. trade law enforcement, and the U.S. competitiveness initiative.

The Administration considers the Uruguay Round negotiations crucial to its goal of liberalizing world trade. We are already seeing substantive progress in the negotiations and we are hopeful that GATT members will be able to reach interim agreements in certain negotiating areas by the mid-term review meeting scheduled for the end of this year.

The U.S.-Canada Free Trade Agreement (FTA), a landmark bilateral achievement, will create the largest free trade area in the world. The FTA, when approved and implemented, will give rise to substantial new trade and investment opportunities on both sides of the border.

An indication of the wisdom of the President's policies is the fact that export volumes have risen for five straight years—up 52.5 percent from the fourth quarter of 1982 to last year's final quarter. During 1986, export volumes rose 10.3 percent and last year they surged a record 18.3 percent.

Import volumes have also continued to rise, though at a decreasing rate, as a strong domestic economy increased demand for imported as well as domestic production. On balance, however, the trends are encouraging.

Question 4. The Administration and the Congress have worked closely together and have nearly completed work on the trade conference. The fate of the bill, however, is uncertain.

(A). What are your specific concerns about this legislation? Under what circumstances would you be able to support a trade bill?

Answer. The Administration has attempted to work closely with each of the subconferences to inform them of its views on all of the various provisions. While I have not been able to work closely on the bill myself, I know that there are a number of provisions which we support, many of which are of particular interest to the Commerce Department. These include some of the provisions affecting our science programs which your Committee sponsored, as well as the amendments providing needed reforms to the Foreign Corrupt Practices Act and the Export Trading Company Act, and amendments liberalizing some of the export control provisions.

While considerable progress has been made over the course of the negotiations, there are still some problems with the bill. The Administration has made it clear that it continues to believe that some of the non-trade provisions, such as the "plant closings and layoff notice" provisions, pose a serious treat to our economic competitiveness. The White House has indicated that it will not be able to approve the bill unless progress is made in resolving these problems.

(B). The trade bill as passed by the Senate includes the text of S. 907, the Technology Competitiveness Act. Secretary Baldrige and later Secretary Verity, as well as Deputy Secretary Brown, all worked closely with the Commerce Committee in developing that initiative, and all expressed support for the version passed by the Senate. Do you also support this proposed legislation?

Answer. The rapid loss of competitiveness of U.S. industry in international markets is an extremely serious problem with wide-ranging consequences for our material well-being, our security, and out political influence. Although there are many reasons for this decline, one important reason is the slow rate at which new technology is commercialized. The Technology Competitiveness portion of the Trade Bill would enlarge the mission of the Department of Commerce and the National Bureau of Standards in transferring technology to manufacturing industries, and in providing coordination for State and Local economic development initiatives on productivity, technology and innovation. The Technology Competitiveness Act reflects the President's program at NBS of research in emerging technologies, such as optoelectronics and superconductivity. This can create whole new industries. The Act clearly reflects the important role NBS can play in contributing to important technologies that will improve U.S. industrial competitiveness.

(C). This Committee passed an amendment to the trade bill which would give the President the authority to block a merger, acquisition, or takeover by a foreign person, if that sale would jeopardize our national security. Do you have any comments on this amendment?

Answer. We all want to ensure that our Nation is adequately protected against a threat to our national security no matter what the cause of the threat may be. We must be careful, however, not to break our longstanding open investment policy and surrender very powerful economic advantages we have enjoyed over the years. Because laws currently exist that enable the U.S. government to safeguard sensitive information and technology, ensure U.S. production, and thwart anti-competitive actions, the Administration has not sought additional authority.

Question 5. What do you believe to be some of your most significant accomplishments as Under Secretary for Travel and Tourism? How will the policies you implemented further the goal of a strong national travel and tourism industry? How has your experience at USTTA prepared you for the job for which you have been nominated?

Answer. Through an educational outreach program and cooperative advertising, I have brought small, U.S. travel suppliers who otherwise could not afford to venture into the international marketplace into the key foreign travel markets of highest potential. I have helped regional groupings of travel-related companies find ways to work together and to take advantage of the fact that the lower U.S. dollar has made the United States a more competitive travel destination.

This year, USTTA will conduct eight regional EXPORT NOW conferences to bring new travel destinations and services to the export market. These conferences will show businesses and state and local tourism associations how to market their tourism "products" to foreign buyers.

As head of USTTA, I have served as a member of the Department's Trade Coordinating Committee and Federal/State Initiative Coordinating Committee and have participated in the resolution of the broader policy and program issues those crosscut committees have had to handle. I am a member of the Secretary's senior staff and am therefore aware of the key programs and issues of other Commerce agencies.

In addition, managing USTTA and chairing the National Tourism Policy Committee have strengthened by management skills and ability to focus resources and set priorities.

Question 6. Last year, ITA spent more than $200 million to promote a variety of largely manufactured U.S. products in foreign markets. . . . Meanwhile, we in the Congress often have to fight tooth and nail just to get a $12 million appropriation for USTTA, which promotes a $260 billion dollar industry. Do you feel that American producers of services—such as our travel and tourism industry—get the short shrift from the Federal government when it comes to export promotion? If so, what have you done to change the situation.

Answer. The Administration and the Congress have agreed that it is essential to reduce the Federal budget deficit. Given that fact, every program has been carefully examined to determine whether the Federal investment could be reduced and other sources of funding could be found. We have been able to increase the resource support of the VISIT USA program by recruiting "new-to-export" companies and state and local agencies. I feel we have made a strong and effective effort.

The fact that the United States earns more export revenue from international tourism than any other country in the world is proof of that.

I would agree that tourism's role as an economic development tool and invisible export is not always understood or appreciated, and I have worked for the past five years to change that.

With respect to other services, in 1982, ITA begin to actively promote services exports. Successful trade missions have been mounted for such diverse services as leasing, franchising, insurance, aviation, helicopter services, and management services.

Question 7. How do you see the future of American industry? Do you agree with some in the Administration who believe older, smokestack industries can be phased out and replaced with service industries?

Answer. Let me take your second question first. I don't know anyone in the Administration who thinks America's basic manufacturing industries can be, or should be, "phased out" and replaced by service industries.

It is widely recognized now that America is not "deindustrializing." In fact, manufacturing's share of gross national product has remained remarkably stable for the past 25 years.

In recent years, far from being "phased out," American industry has been thriving. One reason for this resurgence is the belttightening and restructuring that occurred during the strong-dollar period before 1985. A second reason is more favorable exchange rates since 1985, which have lead U.S. firms to rediscover overseas markets and repatriate offshore operations. American industries are regaining competitive initiative. And their success in global markets is helping to keep our economy growing.

Question 8. How do you see the future of the American textile industry? Can America afford to lose it? What role should government (and particularly the Commerce Department) play in preventing its demise?

Answer. The American textile industry is in no danger of extinctions. On the contrary, in recent years the industry has undertaken an extensive restructuring and modernization effort which has significantly enhanced its long-term viability. The Government will continue to negotiate and vigorously enforce our bilateral textile import restraint agreements under the overall umbrella of the Multifiber Arrangement (MFA). The Commerce Department will continue to play an important role in this process through its chairmanship of the Committee for the Implementation of Textile Agreements (CITA).

Question 9. The House has passed H.R. 1154, the Textile & Apparel Trade Enforcement Act. The Senate will likely take this bill up this year. What is your opinion of this bill?

Answer. If one can forecast the future based on the data from the past four or five years, the textile industry is likely to continue to prosper. Moreover, given its importance, the Administration has a strong interest in seeing the textile industry continue to thrive. The Administration, operating within the Multifiber International Arrangement (MFA), has been negotiating and implementing some tough agreements and has slowed substantially the growth of textile imports.

Accordingly, I cannot support H.R. 1154. Among other matters, it would require the U.S. to violate the GATT, the MFA, and each of the bilateral textile agreements currently in place. I do not believe the textile industry needs protection, and I believe the Administration's initiatives are better for the economy—including the textile industry—than those proposed by H.R. 1154.

Question 10. In a speech you gave on December 9, 1987, you said you were immersed in looking at trade barriers which exist between foreign countries. Do you believe this Administration has effectively reduced trade barriers generally? Specifically, have trade barriers in the tourism industry been reduced?

Answer. Experience has shown that reducing barriers to trade in goods is a continuous process that takes decades, not months. The same is going to be true of efforts to reduce impediments to trade in services. Because services are "invisibles," they aren't as well understood as goods, so any attempt to reduce barriers to trade in services must begin with an educational effort. I have tried, in my current position, to define the barriers to trade in tourism and I hope that in the future we will be able to get them on the bargaining table in the course of the services negotiations now underway in the Uruguay Round. We are also playing a role in the implementation of visa waiver, legislation.

Question 11. You were involved in the Canadian Free Trade Agreement negotiations. Do you believe the Agreement will benefit the tourism industry? Do you believe the Agreement will benefit U.S. industry generally?

Answer. The tourism annex to the FTA essentially locks in the liberal policies that currently govern tourism between the U.S. and Canadian companies of national treatment. Because the United States and Canada are each other's most important tourism market in terms of volume, continued market access is important. Accordingly, I do think that the FTA will benefit the tourism industry.

Moreover, I believe the FTA will benefit industry generally. For example, when fully phased in, the FTA will eliminate the $1.5 billion in Canadian duties collected on U.S. exports. The FTA is a win-win agreement and will result in greater economic growth, increased trade and investment opportunities for U.S. business, more jobs, lower consumer prices, greater competitiveness and energy security than we would have without it.

Question 12. Critics of the FTA express concern that the failure to address Canadian subsidies within the FTA institutionalizes such practices. If the U.S. negotiators could not remove such trade barriers within the framework of FTA negotiations, should this be called a free trade agreement?

Answer. The FTA in no way "institutionalizes" Canadian subsidies. Obtaining agreement on real, enforceable discipline over trade-distorting subsidies was a priority in the FTA and remains one. While we are disappointed that we were unable to solve the problems in the short amount of negotiating time available to us, we have provided for a Working Group to develop such discipline over the next five to seven years. Meanwhile, the United States has fully retained its countervailing duty law to address injurious Candian subsidies. Although the FTA did not solve every problem in our bilateral relationship, it is a significant improvement over the status quo.

Question 13. After President Reagan and Prime Minister Mulroney signed the FTA, the Canadian government proposed a new apparel duty relief plan. In March the Canadian government proposed a new formula for calculating its federal sales tax on imports, which critics claim represents nothing but "a disguised increase in the Canadian tariff." What do you think of these decisions?

Answer. Originally, the Canadians were considering a duty remission scheme that would have foregone $200 million in duties annually. The program which was eventually announced covers $33 million in new programs and an extension of an existing program which covers $18 million. The scheme involves (1) duty elimination on certain fabrics from all sources, (2) duty elimination on certain fabrics of U.S. origin and partial remission and reduction on certain fabrics from other sources, and (3) duty elimination on certain fabrics and yarns from the United States only.

The Administration is not pleased with the duty remission scheme and indicated that to the Canadian Government. However, there are some benefits to the United States in this program beyond what was negotiated in the FTA. Under the announced program, Canadian tariffs on a number of products of interest to the United States will be eliminated immediately upon implementation of the FTA rather than after ten years as was originally negotiated.

With respect to the new tax formula, the Commerce Department and other agencies are currently reviewing the proposed change and its effect on U.S. exporters. If we find that the proposed change has a discriminatory impact on U.S. exporters, we can pursue the matter under the dispute settlement procedures of the Free Trade Agreement or the General Agreement on Tariffs and Trade (GATT).

Question 14. What do you think of the "fast-track" procedure used for the FTA? Do you think there was sufficient consultations in the negotiations with the business community? If so, why does the FTA now face such opposition?

Answer. The fast track provides assurance to our trading partners that the results of lengthy negotiations will be considered on their merits and, if Congress approves them, will be implemented on a timely basis. It also ensures that the Administration, industry and the Congress will consult closely throughout the negotiations and the drafting or implementing legislation.

The Administration consulted closely with the private sector throughout the two years of negotiations. We consulted with Congressionally-designated advisors at hundreds of meetings of the industry Sector Advisory Committees, the Agriculture Trade Advisory Committees and the Labor Trade Advisory Committees. We also held a series of public hearings, as did the International Trade Commission, which heard from hundreds of interested parties.

Over 500 firms have joined the Advisory Committee for Trade Expansion with Canada and have endorsed the FTA. The U.S. Chamber of Commerce, the National Association of Manufacturers and many other business organizations have enthusiastically endorsed the FTRA and urged its approval in both countries.

Question 15. You have applauded the Pacific Rim countries for their lack of restrictions on international travel. Do you believe this "free market access" extends beyond U.S. tourists and U.S. dollars to U.S. products?

Answer. Several Pacific Rim countries have more open product markets than others—notable Singapore and Hong Kong. Others, like Taiwan and Korea, are far more restrictive. Over the past several years, we have held intensive bilateral negotiations with these countries on a wide range of products and services, and have posted some successes.

Taiwan, for example, as a result of U.S. pressure, announced early this year that it would unilaterally reduce tariff rates on over 3000 products, some with significant U.S. export potential. We have also made progress in opening up Taiwan's insurance sector of American companies. Korea agreed to permit the participation of U.S. companies in the insurance industry and to enact new laws protecting the patents and copyrights of U.S. firms. Korea has also announced duty reductions on several hundred products.

More remains to be done, but we have made progress in opening both Taiwan and Korea's markets.

Question 16. One of the major objectives of the new Uruguay Round is to created free trade in services. GATT has never covered trade in services. What do you think will come out of the new Round in this area?

Answer. Our objective for the Uruguay Round services negotiations is to reach an international agreement on "rules of the game" with respect to trade in services covering such matters as transparency and national treatment.

We hope to reach an understanding with our trading partners by the end of this year on the elements of such an agreement. We will then be in a position to write a formal agreement and to develop any additional sector specific rules that may prove necessary.

Once such rules are formally established, they will provide the basis for negotiated removal over time of existing barriers to international trade in services.

Question 17. You describe tourism as a service export. Is the United States running a surplus or a deficit in tourism?

Answer. The United States will run a $1.7 million surplus in its tourism account with Japan in 1988. Overall, we ran a deficit of $9.7 billion in 1987. However, that fact is somewhat deceptive because the U.S. travel industry is not confined to the United States. U.S. hotel chains own and manage properties abroad. U.S. car rental companies operate and franchise outlets abroad. U.S. airlines serve foreign countries. U.S. travel agents earn commissions from foreign hotels and foreign airlines, and foreign subsidiaries and branches of U.S. hotel chains and airlines repatriate profits earned abroad. We don't have precise data on these transactions, but we know they contribute to U.S. foreign exchange earnings and that they have a favorable impact on the U.S. trade balance.

Question 18. As you know, the Committee recently held hearings on foreign investment and has legislation pending before the Committee in this area. Please comment on this legislation.

Answer. Proposals such as the Bryant amendment, which would require the registration and public disclosure of foreign investments in the United States, would place unreasonable, discriminatory and additional reporting burdens on foreign investment. This will have a chilling effect on America's ability to attract foreign investment and capital. As a consequence, some investments will not take place, while others will be diverted to other countries. Thus, this legislation is not only potentially destructive to investment, but will produce little information that is not already collected by the Departments of Commerce, Treasury, and Agriculture and the SEC.

Question 19. An editorial appeared in *The Washington Post* on March 10, 1988 on a provision in the trade bill dealing with reciprocity for primary dealers. The editorial noted that "Japanese funds are coming into this country to buy Treasury securities." It further stated that "anything that threatens or harasses the dealers promises to diminish that flow of [capital]." It advocates adoption of a weaker Senate provision which may not be as fair because the U.S. is unfortunately "desperately dependent" on foreign capital. Do you agree with the theory that we can't do anything in this area to upset the Japanese because we are dependent on their money?

Answer. With respect to primary dealers, I just want to note that the Administration does not favor the Trade Bill's approach of precluding the Federal Reserve from allowing foreign firms to act as primary dealers in U.S. Government securities if the foreign government does not accord national treatment to U.S. firms that want to underwrite and distribute *its* securities. Although I would generally defer to the Treasury Department on this matter, I can say that our opposition is based on our general opposition to protectionist measures, concern over sending a signal that the U.S. is no longer open to foreign financial firms, fear of sparking retaliation, and the failure of Congress to introduce an element of discretion into the designation process, thereby denying the Administration the flexibility it needs to work with Japan to develop an acceptable solution. Our position is based on principle and is fully consistent with the Administration's general policies on trade.

Question 20. This country has a long history of attracting foreign investment—starting, of course, at the beginning of the Republic and continuing through the 19th century, where foreign money helped to build America's infrastructure. Foreign investment is nothing new. However, the U.S. fell from its position as the world's largest creditor nation in 1982 to being the world's largest debtor in 1986. This foreign money was coming in mainly to finance our budget deficits and our overconsumption, not to increase America's productivity. What does this distinction mean for the future of this country? Can the U.S. continue to finance its budget deficits with foreign money?

Does it concern you that experts estimate that the U.S. will be a new debtor to the tune of $1 trillion by 1990?

Answer. We have certainly witnessed a major change in America's international financial position in the past few years. I think it is important to point out, however, that an appreciable share of our recent borrowing from other countries (over $40 billion in 1987 according to preliminary estimates) has been direct investment in productive assets, such as manufacturing operations and in real estate. This investment is creating jobs and modern industrial capacity.

In the 19th century, when the United States was last a net debtor, our country experienced a period of tremendous long-term growth. I don't think history repeats itself precisely. But our recent experience does suggest a parallel: During the last few years, we have indeed borrowed heavily from other countries. At the same time, however, our economy has grown faster and generated many more jobs than have the economies of most of our trading partners.

Clearly, we cannot continue indefinitely to borrow in the amounts that we have been. But with continued cooperation between Congress and the Administration to narrrow Federal budget deficits, and with steady improvement in the trade balance, I believe that there is reason for optimism about our long-term international financial position.

Question 21. This Administration has endorsed—for Canada in the new Free Trade Agreement—a foreign investment review mechanism that not only requires disclosure, but also permits the government to block investments over a certain size and investments of any size in a variety of industries. Why does the Administration support this practice for Canada, but lobbies against anything like this for the U.S. in the Congress?

Answer. In the FTA with Canada, we did not endorse the Canadian practice or support it. We continue to oppose Canadian review of investments and hope we can convince our Canadian friends that such policies are contrary to their own best interests and that they should eliminate this policy entirely in the future.

Nevertheless, the investment agreement with Canada is a substantial improvement over past Canadian policies and secures guarantees for U.S. investors that we have never had before. The agreement substantially reduces Canada's ability to screen U.S. investments, is a substantial accomplishment, and ensures a stable and predictable regime conducive to business.

Question 22. The National Oceanic and Atmospheric Administration (NOAA) represents close to 50% of the Commerce Department budget and well over a third of the Department's personnel. In contrast, atmospheric and oceanic issues appear to receive very little attention at the Secretarial level.

If confirmed, how would you define your role and responsibilities with respect to NOAA?

Answer. The National Oceanic and Atmospheric Administration, in addition to being the largest agency within the Department of Commerce, is clearly one of the most important. Predicting the weather, understanding global climate, managing and protecting the nation's coastlines and oceans are all vital roles for the Department and the Nation. If confirmed, I intend to work closely with the NOAA Under Secretary Bill Evans and Secretary Verity, who has taken a keen interest in NOAA, to assure that this agency's important mission is apppropriately carried out.

Question 23. The current Administration has often been accused of trying to take the "O" out of NOAA. With sharp increased in satellite costs and the approval of the LANDSAT contract, the allocation of agency resources between atmospheric and ocean programs appears more lopsided this year than ever before.

Does this shift towards higher funding for atmospheric programs reflect Administration priorities for the agency? Please explain.

Answer. Administration priorities include both ocean and atmospheric programs. The oceans and the atmosphere are interacting parts of the total environmental system, and cannot be separated since they are mutually dependent on one another. Funds used to support atmospheric programs clearly benefit ocean programs.

In addition to environmental and weather information, NOAA's satellite programs provide numerous fishery and ocean applications. For example, satellite data is being used to monitor red tide off the coast of North Carolina, and weather satellites are used daily for maritime forecasts.

Secretary Verity recently approved a NOAA coastal and oceans initiative that will focus NOAA's broad scientific capabilities toward improving ocean-related national productivity. The initiative is for an "End-to-End" program that includes observation and problem diagnosis, research and model development, forecasting, information dissemination for decisionmakers, and identification of proactive opportunities for more protection and use of the coastal ocean.

Question 24. We are now past the midpoint of the current fiscal year, and the NOAA budget still faces shortfall of more than $30 million. Absent a reprogramming request, I understand that furloughs of about 3 weeks will be required for Weather Service and NESDIS employees.

Does the Department of Commerce intend to furlough NOAA employees? If not, what is the status of the reprogramming request?

Answer. Management of the Department of Commerce will take every necessary action to avoid furloughing employees to meet budget shortfalls. To avoid furlough in NOAA we have submitted a reprogramming request from the Department to OMB. We expect an approved reprogramming request to be sent to the Hill in the very near future.

Question 25. Over the next few years, we will invest hundreds of millions of dollars to procure new weather radars, improved satellites, and automated observation systems for the National Weather Service. The AWIPS and NOAA-PORT have been proposed to integrate all these systems. In the OMB documents, *Management of the U.S. Government,* AWIPS and NOAA-PORT were listed 10th among 17 "Presidential Priority Systems." Now the Administration proposed to drop funding for both. What happened? Why has the Administration decided to cut systems it considered such a high priority last year?

Answer. As you note, modernization for the National Weather Service will require a substantial investment by the Department. We are committed to proceeding with modernization, and have requested substantial funding increases for procurement of the NEXRAD radar system, new weather satellites, and observation systems. We also recognize that data processing is a critical component of modernization. However, NOAA is faced with a difficult budgetary situation, and development of AWIPS and NOAA-PORT would be very expensive. The purpose of eliminating funding for these systems is not to abandon data processing, but to evaluate data processing alternatives and make certain that we invest in cost-effective technologies. The technologies associated with modernization will not be operational for several years, and NOAA has in the meantime requested funding to continue the present Automation of Field Operations and Services (AFOS) system.

Question 26. Several key positions at NOAA, including the Deputy Administrator, the Assistant Administrator for Fisheries, and the General Counsel, are vacant at the present time. I am concerned by the lack of direction and leadership which such vacancies created.

When can we expect a person to be named to these positions?

Answer. The NOAA Under Secretary has been interviewing candidates for each of these positions. I believe final decisions will be announced very soon on each of these jobs.

Question 27. In June 1987 the Department released a study entitled "The Status of Emerging Technologies: An Economic/Technological Assessment to the Year 2000." The study identified seven major groups of emerging technologies that will result in new products or processes in the 21st century, and then identified barriers to their commercialization.

(A). What role do you believe the Commerce Department should play in helping U.S. Industry overcome these barriers and commercialize these technologies?

(B). What roles do you envision that the Office of Productivity, Technology and Innovation and the National Bureau of Standards will play in these efforts?

Answer (A). The "Emerging Technologies" report is one important example of the way in which the Department of Commerce is organizing and taking action in recognition of the importance of emerging technologies to economic growth and international competitiveness. In addition, the Department has identified major policy barriers to the commercialization of these technologies and identifies policy actions that are needed to overcome these barriers.

Answer (B). Examples of the barriers being addressed by OPTI are: developing innovative sources of funding for R&D; increasing cooperation between Federal laboratories and U.S. business; assisting business groups to focus on strategic planning; helping States with their technology and innovation initiatives; supporting the Administration's efforts to liberalize the antitrust law to facilitate joint ventures in manufacturing; helping companies form cooperative R&D consortia; reducing capital costs of manufacturing for small firms through the concept of 'shared' factories; and chairing an interagency working group (initiated by Secretary Verity) to strengthen the U.S. manufacturing base.

The National Bureau of Standards will continue to cooperate closely with U.S. industry to see that industry has the measurements, standards, data, and related technology it needs to compete in the high-technology world market place. The President has proposed increases for several NBS initiatives in emerging technology areas in Fiscal Years 1989, including high-temperature superconductivity research, lightwave measurement technology, high-performance composites, bioprocess engineering, and chemical measurements and standards for process control and quality assurance.

Question 28. Congress voted FY 1988 funds for a joint Federal-industry initiative known as the Semiconductor Manufacturing Technology Project ("Sematech"). Although funds have been voted, the Administration has yet to take a clear overall position on the Sematech proposal. What are your personal views regarding Federal support for Sematech, especially Commerce Department support.

Answer. The competitiveness of the semiconductor industry is obviously vital to the U.S. economy. I am pleased that the semiconductor industry has recognized the serious nature of the challenges they face and are cooperating among themselves and with Government to find solutions.

In general, I support the Administration's reluctance to provide direct Federal support to specific industries. Such actions inevitably distort the free market system on which our whole economy relies. On the other hand, I strongly support the idea of the Federal Government cooperating with industry to provide the fundamental science and technology which improves the capabilities of U.S. firms broadly and which industry lacks sufficient incentives to provide.

Question 29. In 1986, with the assistance of the Commerce Department, Congress passed the Federal Technology Transfer Act. This statute allows and encourages federal agencies to permit their government-operated laboratories to enter into cooperative research agreements with U.S. industry, the states, and universities. Under the Act, the Commerce Department can provide technical assistance to other agencies and will prepare a report every two years. In your judgment, have the federal agencies, industry, and the states shown interest in using this authority to develop new research partnerships? If not, how can such interest be generated?

Answer. The Department of Commerce chairs an interagency committee comprised of agency representatives responsible for implementing the Federal Technology Transfer Act. Great interest has been expressed in the Act, and the Committee has created a number of tools to assist implementation.

The Department will be sending out a questionnaire to the agencies to obtain information necessary for the report to Congress on the use of the Act over the past two years. We are aware of a number of agreements already entered into by the agencies. One of these involved a research consortium comprised of a Federal laboratory and a state university in biotechnology. The State of Illinois and the Peoria local government played a pivotal role in its creation. The Department has held meetings with representatives of the National Governors Association and with State officials alerting them to the possibilities for expanding local economic development through cooperative R&D with Federal laboratories. It is still too early to judge the final results, but the success of the Peoria consortium is being used by the Department to encourage other state and local governments to undertake similar efforts.

Question 30. In 1986, Congress also passed the Japanese Technical Literature Act. The President signed it into law on August 14, 1986. We have three questions about this program and related matters.

(A). The Act directed the Secretary of Commerce to transmit, within one year of the date of enactment, a report on Federal activities to collect, abstract, translate, and distribute unclassified Japanese specific and technical information. When exactly would you, if confirmed, plan to transmit that report to Congress?

(B). When will Congress see the annual reports on Japanese science and technology also called for in the Act?

(C). In April, 1987, the President issued Executive Order 12591, which, among other provisions, says: "The Secretaries of State and Commerce and the Director of the National Science Foundation shall develop a central mechanism for the prompt and efficient dissemination of science and technology information developed abroad to users . . ." If you are confirmed, what steps would you and the Department take to comply with this directive?

Answer. (A). Commerce Committee Staff have received copies of the report which is now being published by NTIS for distribution to members of Congress.

(B). A report, "Ceramic and Semiconductor Sciences in Japan" has been published and is available through NTIS. An additional report on flexible manufacturing systems has been drafted and will be published soon.

(C). The Department of State, the National Science Foundation, and the Commerce Department's National Technical Information Service are formulating a plan to implement this part of the President's Executive Order. If confirmed, I will report back to you on the progress made on this effort.

Question 31. In your 1986 speech before the Miami Conference on the Caribbean, you encouraged Caribbean leaders to pursue a process of reform and to "create an atmosphere which encourages business investment, development and participation on developing tourism." Do you believe that duty-free access under the Caribbean Basin Initiative should be expanded to include textiles, apparel, footwear and other important sensitive items?

Answer. The nations of the Caribbean are some of our strongest trading partners and our mutual trade creates jobs and income for the U.S. and also increases our exports. I think we need to study the effects that duty free access would have on industries such as textiles, apparel, and footwear.

Question 32. In your speeches as Under Secretary for Travel and Tourism, you consistently promote strong partnership between the public and private sectors. How does this view of partnership fit into our overall trade policy?

Answer. I think it fits very well. We need to be moving in the same direction as the private sector. I think that associations of manufacturers or producers could successfully work with the Department in a partnership relationship. One of the functions of our commercial attaches abroad is to identify opportunities for U.S. companies to export and to gather information on foreign laws and regulations that U.S. exporters must comply with. U.S. companies, on the other hand, market their products and follow up leads identified by the foreign commercial service. This is another form of partnership.

Question 33. In your remarks before the 10th Anniversary of the Caribbean Tourism Conference in September 1986, you stated that you faced a responsibility as a tourism leader to eliminate barriers to tourism development and facilitation. What role will you play as Deputy Secretary of Commerce in eliminating these and other trade barriers?

Answer. I will take an active role in the development of the Department's positions on the various trade issues and will, when the Secretary asks me, represent the Department in meetings of the various Joint Commercial Commissions. I will, through my managerial responsibilities, make sure that the Department's programs embody barrier-reducing objectives.

Question 34. Does the USTTA have a role in government decision-making on terrorism policy?

Answer. USTTA works with the State Department's Office of Security and Counter Terrorism (SCT) on a consultative basis on traveler security matters. In addition, the National Tourism Policy Council, which I have chaired, has a Policy Committee on Traveler Security. The Policy Committee is chaired by SCT's Staff Director for Policy.

Question 35. In a speech you gave last year you said one problem you faced as Under Secretary was inadequate data collection in the service category and in tourism. In 1984, the President was given the clear authority by law to collect information on international investment and trade in services. The President was required to the extent feasible to conduct a regular data collection program on trade in services. Has the Commerce Department effectively implemented this act?

Answer. The Department has begun to collect data authorized by the Trade and Tariff Act of 1984. A benchmark survey of services trade (BE-20) was conducted last year. The data are now being tabulated and analyzed. BEA also conducts annual and benchmark surveys of foreign investment, including services investment. In addition, USTTA and Commerce's Bureau of Economic Analysis are working together, using USTTA's Inflight Survey data, to improve the accuracy of tourism figures in the International Transaction Tables.

I am especially interested in this topic and intend to take an active role in insuring that the Department fully implements the Act.

Question 36. Has the working relationship between USTTA and FCS been a productive one?

Answer. Yes, it has. In markets in which USTTA has no permanent presence, commercial officers have carried out a VISIT USA program under the supervision of USTTA regional office directors. This cooperation has enabled USTTA to expand its promotional efforts without investing in additional staff or office space. In addition, Foreign Commercial Service Officers in our secondary markets have attended our marketing conferences in Washington, D.C. and our largest trade show, "Pow Wow."

Question 37. Pursuant to the provisions of the President's new national space policy, the Department of Commerce is specifically responsible for commercial land remote sensing systems and the evaluation of federal procurement of remote sensing data from the U.S. commercial sector.

(A). In your opinion, is land remote sensing the only area of commercial space activity for which the Department of Commerce is specifically responsible? What other areas of space policy is the Department involved with? And what are some of the areas where the Department is considering expansion?

(B). What is the current role of the Office of Commercial Space Programs in the Department of Commerce, and how will you interface with this office?

(C). Does the Department intend to submit legislation to create statutorily an Office of Commercial Space Programs in the Department of Commerce? Does the Department intend to place such an Office under a "possible" Under Secretary of Technology.

(D). What is the current status of the Department's evaluation of federal procurement of remote sensing data from the U.S. commercial sector? Is the Department considering such a procurement of EOSAT data?

Answer (A). The Department has both policy and programmatic responsibilities in the area of commercial space activity. The Department chairs the Commercial Space Working Group, which is the interagency forum for commercial space policy development for both the National Security Council and the Economic Policy Councils of the Cabinet. The Working Group is monitoring implementation of the commercial space policy aspects of the President's new Directive on National Space Policy and the President's 15-point Commercial Space Initiative. The Working Group was also specifically tasked to conduct a study of mechanisms to support private sector financing of space infrastructure.

(B). The Office of Commercial Space Programs coordinates Department activities affecting U.S. commercial space companies. It provides a high-level focus for industry concerns. The overall objective of the Office is to help create an environment allowing maximum private sector investment in space.

The Office is generating information for U.S. industry on the nature of commercial opportunities in space and the extent of international competition. It responds to industry questions and concerns, working, as appropriate, with other agencies within the Department and throughout the government. The Office supports the Department's involvement in commercial space policy development.

(C). The institutionalization of the Office of Commercial Space Programs is currently under consideration within the Department.

(D). NOAA has recently contracted with three industry teams to analyze the mid-1990's market for land remote sensing data, including the government's needs for such data. The studies address how these requirements can best be met by a commercial land remote sensing system in that time frame. The Department does not currently procure data from EOSAT.

Question 38. The Department of Commerce recently approved an export license that will permit Payload Systems Incorporated of Massachusetts to perform commercially sponsored activities aboard the Soviet Space Station MIR.

(A). Is it the position of the Department of Commerce that U.S. firms may conduct activities on the Soviet Space Station MIR? To which extent is that position tempered?

Answer. After careful review of the license application, if the export poses no strategic risk, the Department of Commerce would generally approve low-level goods for export.

The item involved was not a space-related export or product in the usual sense; the equipment involved is not technically equivalent to a communications satellite or other scientific instrument associated with space flight. If appropriate safeguards are established and no strategic risk is imposed, the license application will generally be considered favorably.

(B). In light of the recent decision by the Department to approve the Payload Systems Incorporated export license, has the Administration implemented any additional review mechanisms for such activities? For example, if the exact proposal were submitted tomorrow, would the process and the conclusion be the same?

Answer. The Department does not believe that any additional review mechanisms were necessary in the decision related to the export license application of Payload Systems Incorporated.

The license was reviewed by the Department of Defense, as are all applications for export to the Soviet Union. Defense concurred in the decision to approve the license after determining that the export posed no national security risk.

All required review mechanisms were adhered to, and if the export proposal were submitted again, the process and the conclusion would be the same.

(C). Does the Department support the launch of U.S. payloads on the Soviet launch vehicle Proton? Or the Chinese launch vehicle Long March? To what extent is that position tempered?

Answer. The coordinated U.S. government position is that U.S. companies will not be licensed to launch advanced communications satellites on Proton (or other Soviet) launch vehicles because of technology transfer concerns. The Department supports that position. Furthermore, the Department is concerned that if Soviet launch services are offered in the West on a "predatory pricing" basis (that is, prices below cost), it will be very disruptive for the developing commercial launch service industry. The same concerns apply to the Chinese Long March vehicle, although the technology transfer regime covering exports to the PRC is not as restrictive as that applied to the Soviet Union.

Question 39. Given that all of your experience with the Commerce Department has been in the tourism area, do you think you have the necessary expertise to handle the other statutory functions of the Commerce Department?

Answer. The Chief operating officers of the Department's constituent operating units work in a collegial environment. We are well-versed in each other's programs and projects, so I am aware of the operations of the other Commerce agencies. I know what their problems and priorities are. The job of the Deputy Secretary is to help manage the Department and I am confident that I have the expertise to do that.

Question 40. In your January, 1986, speech before the New York City and Convention Bureau, you stated: "I am, however, concerned that there has been so little willingness on the part of other countries to join with America in its determination to fight the friends of terrorism in perhaps the only way they understand: economic retaliation." What steps, exactly, did you have in mind?

Do you continue to advocate economic retaliation as a tool for fighting terrorism? What about for achieving other policy goals?

Answer. I think we must examine all reasonable options for countering terrorism. Policies and actions must be tailored to the circumstances.

ELAINE CHAO, TO BE A COMMISSIONER, FEDERAL MARITIME COMMISSION

MONDAY, APRIL 25, 1988

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in room SR-253, Russell Senate Office Building, Hon. John B. Breaux presiding.

Staff members assigned to this hearing: Barry Kalinsky, John Hardy, staff counsels; and Macky Ayers, minority professional staff member.

OPENING STATEMENT BY SENATOR BREAUX

Senator Breaux. The committee will please come to order.

This morning the committee will consider the nomination of Ms. Elaine Chao to the Federal Maritime Commission. As many of us in the maritime community know, Ms. Chao currently serves as a deputy administrator of the Maritime Administration under John Gaughan where she has done an outstanding job. Anyone who has worked with her surely has been impressed, as I have, with her high degree of intelligence and professionalism. Her understanding of the practical realities of the maritime industry are clear and her commitment to the interest of this Nation is evident.

I mention these qualities particularly because as an FMC commissioner, and possibly as chairperson, Ms. Chao will be charged with the responsibility of promoting and pursuing the maritime interests of this Nation all over the world.

As I am certain Ms. Chao is aware, Congress is now concluding its consideration of broad trade legislation intended to advance the competitive position of the United States in global markets. As part of this legislation, this committee included provisions which I believe will facilitate and strengthen the ability of the Federal Maritime Commission to succeed in promoting and pursuing our maritime interests worldwide and to eliminate those practices of our trading partners which unfairly discriminate against the U.S. maritime industry.

What I will expect of Ms. Chao and of her Commission colleagues is the full and aggressive implementation of these and existing provisions of law designed to combat unfair trading practices.

While I look forward with great pleasure and confidence to working with Ms. Chao, it is due to unfortunate circumstances that we are here today. As many of you are aware, our friend and former

FMC Chairman, Ed Hickey, passed away earlier this year. Ed's commitment to the cause of promoting U.S. maritime interests throughout the world was both remarkable and very well rewarded. Some of the most difficult and egregious unfair trading practices by foreign nations were resolved in favor of the U.S. interest under his aggressive leadership. We will certainly miss his good work.

But that is not to say that we cannot expect to look forward to a continued outstanding effort by the FMC in this regard. I have every confidence in Ms. Chao and other commissioners, and I know that they will serve admirably in Ed's footsteps.

Again, Ms. Chao brings to the FMC a distinguished record of service in the maritime field, and it is my pleasure to welcome her to our committee today.

I would also ask unanimous consent that a statement of the full committee chairman, Senator Hollings, be made part of the record along with the statement of Senators Inouye, Pressler, and Wilson.

[The statements and biographical sketch follow:]

Opening Statement by the Chairman

This morning, the Committee will consider the nomination of Elaine Chao to the Federal Maritime Commission. Ms. Chao, having served as the Deputy Administrator of the Maritime Administration from the last few years, is certainly no stranger to the maritime community. Her extensive maritime background and management experience should prove to be a valuable asset to the Commission.

The Federal Maritime Commission is an independent agency which is responsible for the regulation of oceanborne liner transportation in the foreign commerce and in the domestic offshore trade of the United States. The Commission's principal tasks are to ensure that all carriers operating in the foreign commerce of the United States, whether U.S.-flag or foreign, whether conference members or independent carriers, compete openly and fairly with one another, and to ensure that domestic liner service is available on a non-discriminatory basis at rates that are just and reasonable.

The principal statutes administered by the FMC are the Shipping Act of 1984, and the International Shipper Act. If confirmed I understand the President intends to designate Ms. Chao as Chairperson of the FMC. As such, she will have the responsibility of setting the Agency's agenda to carry out its statutory obligations. I look forward to hearing Ms. Chao's views on the problems in our liner trades.

Opening Statement by Senator Inouye

This morning the Committee will consider the nomination of Ms. Elaine Chao, to be a member of the Federal Maritime Commission. If confirmed, I understand the President intends to designate Ms. Chao as Chairman.

During the several years I have been a member of the Merchant Marine Subcommittee, the single greatest threat to the stability of our international liner trades and the ability of U.S.-operators to compete in those trades, has been the practice of carriers secretly departing from their published tariffs, that is, offering illegal rebates. These kickbacks to favored shippers not only destroy the ability of carriers to compete honestly but they also give an unfair advantage to foreign carriers over their U.S. counterparts. The records of foreign carriers are far more difficult to obtain, particularly in those countries with so-called "blocking" statutes.

Some years ago after extensive hearings and investigations Congress passed a law greatly strengthening the FMC's power to deal with this pernicious practice.

It has come to my attention that there may be other practices in our international liner trades that could have the same effect as rebating.

One of these practices is quoting rates to shippers that are not in the carrier's tariff, with the understanding that the rates will not be filed until the cargo is booked. These rates may be quoted weeks or even months before the cargo is shipped. Meanwhile, other carriers and shippers have no knowledge of the quoted rates.

Other practices include narrowly drafted commodity rates that can only be used by some shippers; and the abuse of Shipping Act provisions which permit a carrier to correct a clerical or administrative error in its tariffs after the shipments take place.

Either way, when these kinds of practices form part of a general pattern, the integrity of our tariff filing and publishing laws is undermined. If tariffs do not really contain the rates that a carrier is offering, is there any valid reason to continue to require their filing and publication?

With liner shipping in our trades being greatly overtonnaged the temptation to rebate is, of course, correspondingly increased.

The FMC has been very imaginative and aggressive in its efforts to eradicate this pernicious practice, and I hope it will continue its efforts.

STATEMENT BY SENATOR PRESSLER

Thank you, Mr. Chairman, for scheduling this hearing today on the nomination of Elaine Chao to be a Federal Maritime Commissioner. Ms. Chao certainly seems qualified to assume these responsibilities because of her extensive background in both the public and private sectors.

The Federal Maritime Commission, charged with regulating offshore commerce on both a foreign and domestic basis, contributes to our nation's economy by keeping international trade open on an equal basis to all nations. I am confident in Ms. Chao's ability to help administer the FMC and congratulate her on this nomination.

Again, Mr. Chairman, thank you for holding this nomination hearing.

OPENING STATEMENT BY SENATOR WILSON

Mr. Chairman: Although I am unable to introduce Ms. Elaine L. Chao personally at this hearing examining her qualifications as President Reagan's nominee to be Chairman of the Federal Maritime Commission, I am confident that the Committee will find her to be an outstanding nominee for this important position.

The President nominated Ms. Chao on March 25, 1988, in light of her past experience, including both outstanding academic and professional histories. As Deputy Administrator of the Federal Maritime Administration, the agency responsible for promoting the US-flag merchant fleet and administering assistance programs to the US shipping industry, she has proven to be an outstanding manager.

As Chairman of the Federal Maritime Commission, the independent regulatory agency responsible for overseeing the waterborne foreign commerce of our Nation, Ms. Chao would bring to the Commission the qualities necessary to ensure efficient and responsible management and oversight of the FMC's crucial agenda.

Prior to coming to the Maritime Administration, Ms. Chao was Vice President of BankAmerica Capital Markets Group, specializing in domestically syndicated credits. Her experience as a White House Fellow specializing in transportation and trade issues was a natural outgrowth of her experience as a transportation finance specialist for Citibank, after graduating from Harvard Business School. And prior to entering Harvard, after graduating from Mount Holyoke College, she managed logistics and finance issues for Foremost Maritime Corporation. Obviously, Mr. Chairman, Ms. Chao's impressive academic and professional credentials equip her admirably to perform her duties as Chairman of the Federal Maritime Commission with great distinction. Even more important, her personal characteristics of conscientiousness, determination, and energy make me confident that she will do just that.

Members of this Committee recognize the enormous challenges facing our Nation's maritime industries. The Federal Maritime Commission must ensure that agreements among ocean common carriers, tariff filings, licensing of international ocean freight forwarders, and other regulations affecting the maritime community are handled efficiently and in a manner which promotes the viability of our maritime fleet. In addition, the FMC must protect US shippers and carriers from restrictive foreign trade practices. I believe that Ms. Chao has demonstrated the ability and drive necessary to be appointed as Chairman of the Commission, and I strongly urge the Committee to expedite her confirmation.

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN

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United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: CHAO (Last) ELAINE (First) (Other)

Address: 2500 VIRGINIA AVE., NW (Current residence) WASHINGTON, DC 20037
400 7th ST., SW (Business) WASHINGTON, DC 20590

2. Position to which nominated: FEDERAL MARITIME COMMISSIONER
Date of nomination: 3/25/88

3. Date of birth: 3 (month) 26 (day) 53 (year)
Place of birth: TAIWAN

4. Marital status: SINGLE
Full name of Spouse:

5. Names and ages of children:

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
HARVARD BUSINESS SCHOOL	1977-79	M.B.A.	1979
M. I. T.	SPRING 1979	CROSS REGISTRATION	
MOUNT HOLYOKE COLLEGE	1971-1975	A.B.	1975
DARTMOUTH COLLEGE	1974	12-COLLEGE EXCHANGE STUDENT	
COLUMBIA UNIVERSITY	1972	SUMMER SCHOOL	

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
1986	PRESENT	DEPT. OF TRANSPORTATION	400 7TH ST., SW, WASHINGTON, DC	DEPUTY MARITIME ADMINISTRATOR
1984	1986	BANKAMERICA CAPITAL MARKETS GROUP	555 CALIFORNIA ST. S.F., CA	VICE PRESIDENT SYNDICATIONS
1983	1984	OFFICE OF POLICY DEV.	THE WHITE HOUSE	WHITE HOUSE FELLOW
1979	1983	CITICORP, N.A.	399 PARK AVE., NYC	COMMERCIAL BANKER
SUMMER 1978		GULF OIL CORP.	PITTSBURGH, PA.	PLANNING ASSOCIATE
1975	1977	FOREMOST MARITIME CORP.	50 BROAD ST., NYC	STAFF

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

1986 - PRESENT DEPUTY MARITIME ADMINISTRATOR, DEPT. OF TRANSPORTATION

1983 - 1984 WHITE HOUSE FELLOW, OFFICE OF POLICY DEVELOPMENT, THE WHITE HOUSE

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

MEMBER, REPUBLICAN PARTY, REGISTERED IN CALIFORNIA

VOLUNTEER, REAGAN-BUSH '84 - OCTOBER, NOVEMBER 1984

CONTRIBUTIONS: P. WILSON FOR SENATE - 1988
A. D'AMATO FOR SENATE - 1988
C. COX FOR CONGRESS - 1988
D. ROHRABACHER FOR CONGRESS - 1988
R. EDDY FOR SENATE - 1986
REPUBLICAN NATIONAL COMMITTEE - 1986, 1987

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable and other organizations.

Harvard Alumni Association, Executive Board, Harvard University, Cambridge, Ma., 1987-1990, Elected Director.

Harvard Business School Alumni Council, Executive Committee, Harvard Business School, Boston, Ma. 1987-1990, Director.

National Maritime Hall of Fame Selection Committee, Member. 1986-Present.

National Academy of Sciences, National Research Council, Transportation Research Board, Washington, D. C., Executive Task Force Member, 1986-Present.

Harvard Business School Club of Greater New York, 1979-1987.

Board of Directors, Elected Director, 1983-1986.

Senior Vice President of Programs, 1983.

Vice President, 1981-1983.

Chairman of the Applicant Relations Committee. 1981-1983.

Harvard Advisory Group to the Brooklyn Navy Yard (a community project of the Harvard Business School Club of Greater New York), Volunteer Consultant, 1982-1983.

Harvard Business School Club of Washington, Member, 1983-1984.

Harvard Business School Club of Northern California, Member, 1986.

Harvard Club of New York City, Member, 1979-1988.

Organization of Chinese-Americans, Inc., Washington, D. C. Chapter, Member, 1987-1988.

World Affairs Council, San Francisco, Ca., Appointed Member, 1985-1986.

Executive Women in Government, Member, 1987.

Senator **Breaux**. Elaine, we welcome you to the committee and would be pleased to hear any comments that you might have.

STATEMENT OF ELAINE CHAO

Ms. **Chao**. Thank you. Mr. Chairman, I appreciate the opportunity to appear before you and the committee this morning.

I am honored to have been nominated by President Reagan to be a commissioner and, once confirmed, Chairman of the Federal Maritime Commission. I would like to take a moment to reflect upon the contributions of the Commission's prior Chairman, Edward V. Hickey, Jr. Former Chairman Hickey led the Commission most ably and left a legacy of commitment, goodwill and accomplishment throughout the maritime industry, with the Congress, and of course within the Commission itself. If confirmed, I will do my best to see that legacy further enhanced during my tenure.

As you mentioned, I am currently the Deputy Maritime Administrator of the Maritime Administration. In this position, I have gained a great appreciation for the difficulties which face the U.S. maritime industry. As I move from my present role in a promotional agency to a regulatory commission, I believe that my experience will serve me well in working with the members of the Commission to resolve the challenging issues it faces daily.

I would like now, Mr. Chairman, to address some of the issues that I believe will be particularly important in the coming year. In doing so, let me say that I have not had a chance to study any of these issues in depth and, therefore, have come to no conclusions on any one of them.

The first issue is computerizing the tariff filing system. As you know, the Commission for several years has been conducting a process that will lead to the automated filing and retrieval of the tariff information that is currently filed in hard copy, paper format. I gather that this project has been a long and at times a difficult one as it involves numerous industry and government interests. I believe, however, that the Commission is to be commended for initiating this effort and for taking the time to ensure that it is done properly.

I understand, Mr. Chairman, that you have inquired about this project, and I would like to assure you that I fully appreciate the importance to the industry of automating this process. I look forward to participating in the implementation of this project, and will do my best to effectuate its successful completion.

Now, another principal responsibility of the Commission in the coming year will be the collection and the assessment of data from which the impact of the 1984 Shipping Act on the transportation industry will be determined. I understand that the Commission continues to gather information from all segments of the ocean transportation industry, and appears well on its way to meeting its mandate under section 18 of the act.

The importance of this effort cannot be overstated. Ultimately Congress will have to judge whether the Shipping Act of 1984 is achieving its goals or whether refinements are necessary. I intend to ensure that when that time comes, the Commission will have done everything possible to provide Congress with an adequate basis upon which to make such a judgment.

The Shipping Act of 1984 currently reflects the legislative process that sought to accommodate the interests of shippers and carriers. I believe it is important that the Commission in its current actions and interpretations continue to preserve the balance between the shipper and carrier interests as mandated in this act.

As a result of the changes wrought by the Shipping Act of 1984, the Commission has placed less emphasis on the pre-implementation review of agreements and has devoted greater attention to the enforcement of the various proscriptions of the 1984 act. This has meant a closer scrutiny of actual commercial practices and an effort to remove malpractices from U.S. trades. The Commission's success in this area is evident and these efforts will be maintained.

As you know, Mr. Chairman, the Commission has also been very active during the past few years in addressing foreign government practices that create unfavorable conditions for U.S. flag carriers or for shipping in general in our foreign trades. I know, Mr. Chairman, that this is another area of great interest to you. The Commission has had notable success as time after time, foreign governments have removed or modified their unfair practices rather than face sanctions by the Commission. The Commission must continue these efforts to maintain an equitable operating environment in our ocean trades. As in the past, this will include close cooperation with certain executive agencies, particularly the Department of State and the Department of Transportation. However, I must emphasize that the Commission as an independent regulatory agency must itself determine the appropriate course of action consistent with its statutory mandate.

Mr. Chairman, I would also like to say that because of my background in general management, as Chairman I will also be dedicated to ensuring that the Commission continues to operate in as efficiently and responsively a manner as possible and to provide a fair and open process for all interested parties.

In conclusion, Mr. Chairman, I am gratified by the President's confidence in me and, again, I appreciate this opportunity to appear before you today as you consider my nomination. The present members of the Commission represent a wealth of experience and knowledge, and I look forward to working closely with them.

I also want to state that I will always be available to you and your committee on matters of mutual interest, and I would be happy at this point to answer any questions you may have.

Senator **Breaux**. Thank you very much, Ms. Chao.

Do we have any opening comments by any of our other Senators? Senator McCain from Arizona?

Senator **McCain**. Mr. Chairman, I am here to express my support for this nominee. I am sure that I reflect the views of the other members at seeing a very highly qualified and dedicated person who has substantial previous experience as Deputy Administrator at the maritime administration. You, Mr. Chairman, and I are both very concerned about the state of our maritime industry in this country not only from an economic standpoint, but from a military and strategic standpoint as well. I believe that this nominee has a keen appreciation of the crucial importance of the maritime industry to the future security of this country, both economically and militarily. I am pleased to be here to support her nomination.

Thank you, Mr. Chairman.

Senator **Breaux**. I thank the Senator.

Anything from the Senator from Alaska at this point?

Senator **Stevens**. Mr. Chairman, on behalf of the minority, I went over the clearance reports for Ms. Chao. I want to state for the record that there is nothing in those reports that could in any way cast any shadow upon the nominee. They were perfect reports.

Senator **McCain**. Except for being at Harvard.

Senator **Stevens**. That improved them, as a matter of fact.

I, too, am delighted to be here and to see the nominee here. I think it is a great opportunity for her and an opportunity for us to see if a new approach down there might cast us some new ideas. So, I'm pleased to support her nomination.

Senator **Breaux**. I thank the Senator for his comments.

My only concern is how in the world is John Gaughan going to run his shop now that you are going to be leaving.

Ms. **Chao**. John is a very capable administrator. He'll be fine.

Senator **Breaux**. Let me ask just a couple of questions from a policy standpoint, Ms. Chao, so we can have your thoughts.

The trade bill which the Senate will be considering this week has a maritime provision that many of us worked very hard to pass, and is basically intended to help the Federal Maritime Commission level the playing field between U.S. carriers whenever our foreign trading partners do not play by the same rules and have prohibitions against our vessels using their ports or additional restrictions that we do not impose. Existing law which the Federal Maritime Commission administers, contains authority to address those unfair trading practices.

I would like your comments on if the maritime provision is enacted into law, do you feel it will be helpful? Are you going to be able to carry out those new provisions with enthusiasm?

Ms. **Chao**. Mr. Chairman, let me just say for the record that I will alway carry out the law.

As I understand it the final version, of the bill has three particular provisions: a workable standard I think for judging foreign practices, improved information gathering tools, and thirdly, expanded remedies for the Commission. I believe these will give the Commission added flexibility in dealing with some of the unfair foreign trade practices and will increase its arsenal of tools, so to speak, with which to combat these foreign trade practices. Certainly these unfair trade practices are of great concern to the Commission, and I will certainly enthusiastically pursue and enforce the law.

Senator **Breaux**. Of course, the ultimate remedy is not to allow foreign carriers to use the facilities and the ports of our Nation if, indeed, their grievance and their wrongdoing toward our carriers are so severe that they have those type of restrictions over there. Do you have any problems with that type of provision should it become law?

Ms. Chao. Certainly, that is one of the remedies that is currently available to the Commission. Again, I think that the trade bill, if enacted, will give the Commission a greater array of remedies from which to choose to combat these practices. I have no problem with that at all.

Senator Breaux. The FMC's annual report last year for fiscal year 1987 stated that the year 1987 was significant for the FMC because it so clearly reflected the agency's new emphasis on aggressive enforcement initiatives. What can we expect after your confirmation? And should you become Chairman, would it be a policy of continuing that? Can we expect any changes in style or aggressiveness? Or do you plan to continue in that same direction that last year's report said the Commission had embarked?

Ms. Chao. In preparing for this hearing, I have looked at the annual reports of previous years. Last year annual report was certainly distinctive in its emphasis on enforcement.

As I mentioned in my testimony, the legacy of Ed Hickey, who was a strong enforcer will be maintained and enhanced during my tenure. And I will devote the necessary resources within the Commission to enforcement.

Senator Breaux. As you probably know, the Shipping Act now prohibits any malpractices such as the secret departures from the tariffs that are filed with the FMC or illegal rebating. Experience has shown that when illegal rebating is rampant, that we have rate wars and discrimination between shippers, and it ensues, and trade becomes very chaotic at best. Nevertheless, some have advocated that if we abolish the tariff filing requirements, there could be no secret departures or the rebating would not be illegal.

If we did abolish the tariffs, do you believe we could still ensure that all shippers are treated on a nondiscriminatory basis?

Ms. Chao. The whole purpose of having published tariffs is supposedly to prevent unfair discrimination among shippers. In the absence of such published tariffs, I would wonder whether there would be greater latitude for treating shippers differently. That is a real concern.

Senator Breaux. Do you think it would be a problem if we moved in that direction? Would it be difficult from an enforcement standpoint?

Ms. Chao. Absolutely. Clearly, without tariff a basis, the Commission would find it very difficult to carry out its enforcement responsibilities.

Senator Breaux. In 1984 Congress, of course, enacted a major overhaul of our Shipping Act of 1916, and many of the problems that the 1984 legislation attempted to address were caused not by the 1916 act, but clearly by administrative interpretations over a period of many years. As a consequence of those interpretations, the antitrust tail was really wagging the maritime dog, and our U.S. flag carriers were the principal losers. Some have expressed fear that this would reoccur even though Congress has tried its best in the new law to guard against that eventuality.

In this connection, for example, I note that the Department of Justice has taken the position before the Federal Maritime Commission that the Shipping Act precludes conferences from prohibiting their members from taking independent action on loyalty contracts. Can you give us your views on this particular risk?

Ms. **CHAO**. The issue as to whether conference members can limit or prohibit the ability of their members to offer loyalty contracts is a docket proceeding before the Commission. So, it would be inappropriate for me to comment at this time.

I do, however, understand your concern and also the wide commercial implications this ruling would have. The issue must be treated with great care.

Senator **BREAUX**. I respect that position.

Senator, do you have any questions you would like to ask?

Senator **STEVENS**. Not this morning. Thank you.

Senator **BREAUX**. We have a couple more. And I think Senator Inouye has a question or two that he will submit for the record. I would ask that you please respond.

With that, Ms. Chao, I think that you have heard expressions of support from many of us who are very concerned about the maritime community and improving the system. I am very pleased that the administration has reached out and nominated you. It is very important that any nominations, particularly those, however, at the last part of an administration, still be professional and people with ability and experience. There is no question that you meet that standard in every sense of the word. We are pleased to consider your nomination.

So, with that, if there are no more questions, other than the ones that will be submitted for the record, this hearing will be adjourned.

Ms. **CHAO**. Thank you, Mr. Chairman.

[Whereupon, at 10:20 a.m., the committee was adjourned.]

[The information referred to follows:]

PREHEARING QUESTIONS OF THE COMMITTEE

Question 1. What do you believe is the proper role of the FMC in regard to fostering a strong U.S. flag-merchant marine as stated in the declaration of policy contained in the 1920 Merchant Marine Act?

Answer. The Commission's authority under the Merchant Marine Act, 1920 is contained in section 19 of the Act. In particular, section 19(1)(b) authorizes the Commission to take action against "conditions unfavorable to shipping" in U.S. foreign trades. Thus, section 19 can be used to keep our foreign trades open by guaranteeing equal access to cargo and insuring non-discriminatory treatment. This can benefit U.S.-flag carriers, as is aptly illustrated by the Commission's recent actions which led to an easing of the restrictions and burdens on the intermodal operations of U.S.-flag carriers, thereby enabling them to conduct their operations more efficiently.

Question 2. Do you feel the FMC needs additional regulatory authority under the statute it administers to achieve its objectives? If so, what measures would you propose be enacted?

Answer. It is too early for me to judge whether the Commission needs additional statutory authority to achieve the objectives set for it by Congress. I understand, however, that the Omnibus Trade Bill (H.R. 3) includes the Foreign Shipping Practices. I am also aware that the Commission is in the process of obtaining information on the impact of the Shipping Act of 1984, pursuant to section 18 of that Act. When that process is completed and the data is analyzed, the other Commissioners and I will be in a better position to determine whether additional legislation is needed.

Question 3. Do you agree that the establishment of an automated tariff system will enhance the FMC's ability to discharge its regulatory and enforcement responsibilities?

Answer. I am told that the Commission processes approximately 700,000 paper tariff pages per year. This very workload would indicate that some type of automation effort must be undertaken. I am in favor of such an effort. This effort must be founded on a deliberate and open decision process. In addition, my experience has shown me the implementation phase requires a coordinated team effort between staff, consultants, and particularly top management. One of my first acts as Chairman will be to fully familiarize myself with the automated tariff system program. I am aware of the importance of this matter and its significant impact upon the industry, and I intend to devote my personal attention to it.

Question 4. The Omnibus Trade Bill (H.R. 3) contains the Foreign Shipping Practices Act of 1988, a provision designed to strengthen the FMC's powers to deal with restrictive foreign laws and practices. Please comment on the legislation and whether you believe the Commission's powers will be strengthened in this area?

Answer. I understand the final version of H.R. 3 gives the Commission a new standard under which to judge foreign maritime practices, additional means by which to develop information concerning such practices, and a wide range of remedies to apply in the event certain conditions are found to exist. It appears that this legislation will give the Commission an additional tool with which to address unfair maritime or maritime related practices that may adversely affect U.S.-flag carriers. I understand the concern of Congress as expressed in this legislation and will do everything I can to ensure that it is implemented by the Commission in the manner intended by Congress.

Question 5. For the past several months, the FMC has aggressively acted to combat illegal practices prevalent in the oceanborne trade of the United States. Do you plan to continue this policy during your Chairmanship?

Answer. Yes. I believe that one of the intents of the Shipping Act of 1984 was that the FMC seriously and consistently work to discover and eliminate those malpractices, such as rebating, which are so detrimental to the oceanborne trade of the United States. I further believe that the Congress and the shipping industry and public expect no less from the Commission. The Commission, by aggressively pursuing a fair and credible enforcement program, is therefore able to demonstrate its commitment to and have a positive effect on the foreign commerce of the U.S.

POSTHEARING QUESTION OF SENATOR INOUYE

Question. Over the past few years, it has been suggested within the Administration that it would be desirable to deregulate domestic ocean liner shipping. And indeed, I believe the FMC undertook some efforts in that direction. Indeed, one FMC Commissioner, in a response to my question on the subject, replied:

"It is clear to me that further inquiry is critically needed to: (a) determine the level of regulation that is needed to balance the barriers to entry in these trades resulting from the Jones Act restrictions, and (b) determine what agency or department is best suited to undertake this regulatory responsibility. Hopefully, this inquiry would result in appropriate remedial legislation."

Sufficient, regularly scheduled liner service from the mainland at fair and reasonable rates is essential to my state. Because of our unique geography it is also essential, in my view, that other parts of the state are served under a common tariff from the mainland to Honolulu. So far the present system has worked pretty well.

In the past few years deregulation has become a very fashionable concept which, in practice, however, has produced some very chaotic results and, in some cases, hardship for the users it was intended to benefit.

Do you have any views on the question of de-regulating our domestic trades?

Answer. The assumption underlying the suggestion that the domestic offshore trades should be deregulated is that there would be sufficient competition in the absence of regulation to keep rates reasonable. Effective competition depends on the ability of potential competitors to enter the domestic trades. Although the statutes administered by the FMC do not restrict entry, the Jones Act restricts many of the domestic trades to carriers operating vessels built in the United States. This greatly reduces the number of potential competitors in the domestic offshore trades. I do not believe that any proposal for deregulation can be evaluated properly without considering the effects of the Jones Act on entry into the domestic trades.

Even in those trades where the Jones Act is inapplicable, there is not a multitude of competing carriers. Most domestic trades are dominated by no more than three carriers. Typically, smaller carriers compete for bulk or special cargoes, but do not offer effective competition for container cargoes.

It is difficult to predict whether deregulation would increase the number of competitors in the domestic trades. It has been argued that deregulation would remove the only remedy which the shipping public has against unreasonably high rates in these trades.

I would note, moreover, that any attempt to modify the present system of rate regulation in the domestic offshore trades should address the present situation by which a carrier in these trades can choose to be regulated by the FMC or ICC, depending on how it structures its service. Although I have no position as to which agency should have jurisdiction over these trades, I do believe that there should only be one agency responsible.

POSTHEARING QUESTION OF SENATOR BREAUX

Question. The participation by Soviet vessels in U.S. liner trades in the 1970's was a major factor leading to enactment of the Ocean Shipping Act of 1978. That legislation, which is directed at excessive rate-cutting by state-controlled carriers, was carried out intact into the Shipping Act of 1984. Among other things, it required state-controlled carriers acting as cross traders to give 30 days advance notice of rate reductions, and authorizes the Federal Maritime Commission to suspend and/or disapprove any rates that it finds to be unreasonably low.

The Shipping Act of 1984 also contains new authority for ocean carriers and conferences to enter into service contracts with shippers. The rates charged under these contracts become effective immediately upon filing and the FMC has no authority to suspend or disapprove those rates. Could service contracts be used by state-controlled carriers to circumvent the provisions of the Ocean Shipping Act of 1978, and if so, do you believe Congress should close this loophole?

Answer. The controlled carrier requirements of section 9 of the Shipping Act of 1984 apply to rates or charges of controlled carriers contained in tariffs filed with the Commission, 46 U.S.C. app. § 1708(a). However, service contracts permitted under the 1984 Act are specifically excluded from the general tariff filing requirements of the 1984 Act. As a result, it is theoretically possible for a controlled carrier to achieve, through the use of a service contract, that which it is precluded from doing under section 9—*i.e.*, to offer an immediate rate reduction to a shipper.

I am not aware of the extent to which this may be occurring in practice. I would agree, however, that if the use of service contracts by controlled carriers results in significant avoidance of the section 9 proscriptions, this situation may warrant remedial legislation.

LEMOINE V. DICKINSON, JR., TO BE A MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD

TUESDAY, MAY 10, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SR-253, Russell Senate Office Building, Hon. Wendell H. Ford presiding.

Staff members assigned to this hearing: Carol Carmody, staff counsel and Macky Ayers, minority professional staff member.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Good morning, ladies and gentleman. We are here this morning to perform one of the most important jobs of the committee, and that is to consider the nomination to be a member of the National Transportation Safety Board.

The NTSB has the responsibility of determining the causes of transportation accidents and of making safety recommendations based on those determinations. A member of the NTSB must have expertise in a variety of transportation subjects.

Mr. Dickinson has been nominated to fill the vacancy on the board which was created when Patricia Goldman resigned to work in the airline industry. The term extends through December 31, 1988. Mr. Dickinson has served since 1982 as a special assistant to Vice Chairman Goldman. Before that he had worked at the Department of Transportation as special assistant to the deputy secretary. He has also worked at the Office of Technology Assessment, the Department of the Navy and U.S. Corps of Engineers.

His educational achievements include a bachelor and a masters degree in engineering and a Ph.D. from the University of Maryland.

Welcome, Mr. Dickinson, today, and the distinguished colleague you have with you. I'm sure he has some gems and pearls for us this morning, and I look forward to hearing from Senator Warner.

Senator Pressler has submitted an opening statement for the record.

[The statement and biographical sketch follow:]

OPENING STATEMENT BY SENATOR PRESSLER

Thank you, Mr. Chairman, for scheduling this morning's hearing on the nomination of Lee Dickinson to be a member of the National Transportation Safety Board (NTSB).

Mr. Dickinson's impressive list of credentials in the field of civil engineering will provide him with an excellent background for a position on the NTSB. His experience as a Special Assistant to the Board's Vice Chairman will also be a valuable asset.

NTSB's important responsibility with the promotion of transportation safety through investigations into accidents and recommending safety improvements is a benefit to us all. I congratulate Mr. Dickinson on his nomination to be a member of the NTSB and wish him the best.

ERNEST F HOLLINGS SOUTH CAROLINA CHAIRMAN

DANIEL K INOUYE HAWAII
WENDELL H FORD KENTUCKY
DONALD W RIEGLE JR MICHIGAN
J JAMES EXON NEBRASKA
ALBERT GORE JR TENNESSEE
JOHN D ROCKEFELLER IV WEST VIRGINIA
LLOYD BENTSEN TEXAS
JOHN F KERRY MASSACHUSETTS
JOHN B BREAUX LOUISIANA
BROCK ADAMS WASHINGTON

JOHN C DANFORTH MISSOURI
BOB PACKWOOD OREGON
NANCY LANDON KASSEBAUM KANSAS
LARRY PRESSLER SOUTH DAKOTA
TED STEVENS ALASKA
BOB KASTEN WISCONSIN
PAUL S TRIBLE JR VIRGINIA
PETE WILSON CALIFORNIA
JOHN McCAIN ARIZONA

RALPH B EVERETT CHIEF COUNSEL AND STAFF DIRECTOR
W ALLEN MOORE MINORITY CHIEF OF STAFF

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed. please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Dickinson, Jr. (Last) Lemoine (Lee) (First) Vinton (Other)

Address: 8810 Surrey Court (Current residence)
Alexandria, Virginia 22309

National Transportation Safety Board (Business)
Washington, D.C. 20594

2. Position to which nominated: Member, National Transportation Safety Board

Date of nomination: April 13, 1988

3. Date of birth: September (month) 29, (day) 1943 (year)

Place of birth: Washington, D.C.

4. Marital status: Married

Full name of Spouse: Marie Fabrizio Dickinson

5. Names and ages of children: None

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Maryland	9/61 - 1/66	B.S.C.E.	January 1966
University of Maryland	1/71 - 5/73	M.S.C.E.	May 1973
University of Maryland	5/73 - 5/75	PhD.	May 1975

7. Employment record: **List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.**

From	To	Name of employer	Address	Type of work
2/66	3/67	Navy Department Naval Facilities Engr.	Department of Defense Command, Washington, D.C.	Civil Engineer/Engineer Management Training
3/67	4/68	Greenhorne & O'Mara Consulting Engineers	6715 Kenilworth Avenue Riverdale, Maryland 20840	Design Civil Engineer
4/68	1/71	U.S. Army Corps of Engineers --		
2/70	1/71	U.S. Army Corps of Engineers	U.S. Army Engr. Command Long Binh, Vietnam	1st LT./Civil Engineer
3/69	2/70	U.S. Army	U.S. Army Engineer School Ft. Belvoir, Virginia	Instructor
9/68	2/69	U.S. Army Officer Candidate School	Ft. Belvoir, Virginia	Officer Candidate School
4/68	8/68	U.S. Army	Ft. Leonard Wood, Mo.	Basic Training
1/71	9/75	University of Md. Dept. of Civil Engineering	College Park 20742 Maryland	Graduate student, teaching assistant, research assistar instructor
9/75	5/77	The MITRE Corp.	1820 Dolley Madison Blvd. McLean, Virginia 22101	Engineering analysis, program review, staff engineer
5/77	3/81	Off. of Technology Assessment; Science, Information, and Transportation Div.	U.S. Congress Washington, D.C. 20510	Transportation planning, conducting studies, policy analysis, preparing testimony
3/81	5/82	Dept.of Transportation Office of the Deputy Secretary	400 7th St.,S.W. Washington, D.C. 20590	Transportation engineering, oversight of modal administrations, advising Deputy Secretary
5/82	Present	Nat. Transportation Safety Board Vice Chairman's Office *	800 Independence Ave.,S.W. Wash., D.C.20594	Accident investigation, analysis, engineerin advising Vice Chairman

*Vice Chairman resigned February 5, 1988

Part-time Employment:

1/80	Present	Catholic University of America	Dept. of Civil Engr. Wash. D.C., 20064	Instructor (one course during spring semester only)
9/75	5/80	University of Md.	Dept. of Civil Engr. College Park, Maryland 20742	Part-time Instructor

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

Institute of Transportation Engineers - Associate Member

American Society of Civil Engineers - Member

Women's Transportation Seminar - Member

Chairman, Transportation Research Board, Committee on Railroad Safety, National Research Council, Washington, D.C. September 1980 - January 1982

Viking II Condominium Association Ocean City, Maryland - Past President and Past Secretary Treasurer

Wilton Forest Civic Association Alexandria, Virginia - Past Vice President

Sigma Xi Scientific Research Society - Member

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Phi Kappa Phi Honorary Society - Member

Bronze Star, Vietnam - U.S. Army Corps of Engineers - 1970

Distinguished Military Graduate - Officer Candidate School, Ft.Belvoir, Virginia 1969

Graduate Assistantship (teaching and research) - University of Maryland (1971-1973)

Research and Teaching Fellowship - University of Maryland (1973-1975)

Registered Professional Engineer (Virginia #6728 and Maryland #8883)

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

Over the past six years, my position has been in a supportive role assisting the Vice Chairman of the National Transportation Safety Board. As such, my publications during this period have been minimal.

Senator FORD. Senator Warner?

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM VIRGINIA

Senator WARNER. Mr. Chairman, I always appreciate appearing before you, and appreciate the opportunity to be of service to you on the Rules Committee.

I have listened carefully as you have recited my entire statement in terms of the factual history. I think I would just add that there's a partnership in this family and the other partner, the nominee's wife, works on the Senate Armed Services Committee staff. And I presume she is here today.

Thank you for the privilege of joining you this morning. I'm honored to know this fine gentleman. I vouch for his character and he is well-trained for the job to which the President has indicated his preference to the Senate.

Mr. Chairman, I appreciate this opportunity to appear before the committee this morning on behalf of Mr. Lemoine V. Dickinson, who has been nominated by the President to be a member of the National Transportation Safety Board.

I am aware of the critical mission of the Safety Board and the need to have the most technically qualified people serve upon it. Mr. Dickinson would bring to the board his 6 years of experience as Special Assistant to the Vice Chairman of NTSB. Mr. Dickinson holds a doctorate in transportation planning/traffic engineering, and his background qualifies him well for this post.

In addition, his previous high level policy-making positions and DOT and OTA, and the private sector, as well as his knowledge of the transportation system and its safety issues would be especially beneficial in this role. Mr. Dickinson's service to the Nation in the U.S. Army Corps of Engineers broadens the base of knowledge and experience he will bring to the NTSB.

Mr. Chairman, Lee Dickinson will be stepping into this post at a time that is critical to transportation safety in our country. The NTSB cannot ask for a more qualified and dedicated individual and I strongly support him for this position. Thank you for letting me appear today.

Senator **Ford**. We appreciate your coming and presenting Mr. Dickinson this morning.

Senator **Ford**. Mr. Dickinson, we are delighted to have you here. We will probably not take very long, which will please both of us I hope. If you have an opening statement, I would be delighted to have that for the record.

STATEMENT OF LEMOINE V. DICKINSON, JR., Ph.D.

Mr. **Dickinson**. Thank you, Mr. Chairman. I do have an opening statement. I have a few small words that I would like to make, if I can, please.

Mr. Chairman, I am pleased to appear before the committee this morning and honored that President Reagan has nominated me to be a member of the National Transportation Safety Board.

As you may know, I have been with the Safety Board for six years. During this time I was a special assistant to the Vice Chairman, Patricia Goldman. In that position I was involved in virtually every aspect of the Safety Board's work, from on-scene accident investigations to hearing preparation and conduct, and also a review of accident reports and analyses. During these years I have had the privilege of working with the Safety Board staff both at headquarters and in the field. These professional and dedicated people are a major reason why the Safety Board is highly regarded worldwide in accident investigation. My professional relationship with them has been excellent and, if I am confirmed, will be a valuable asset to me in my new role.

I believe my engineering background and technical experience uniquely qualify me to be a board member. As you and Senator Warner have stated, before coming to the board, I was with the Office of the Secretary and the Office of Technology Assessment. I believe that the experience both in OST and in OTA will be very beneficial to me in this role.

Mr. Chairman, in closing I would like to make one final point. I have thoroughly enjoyed my six years on the Safety Board and I hope to continue working with the staff and the board members in a collegial atmosphere to further advance transportation safety.

I would also like to say that I am honored to be the first assistant in the board's 21 year history to be nominated to be a board member. If confirmed, I look forward to working with this committee, the Federal agencies and the transportation industry.

Thank you for the opportunity to appear today, and I will be happy to answer any questions.

Senator FORD. Thank you very much, Mr. Dickinson.

I have two or three questions I'd like to ask you today. There may be other Senators with questions to be given to you in writing, and we ask that you respond in a timely manner, if you will.

Mr. DICKINSON. Yes, sir.

Senator FORD. As you probably know, I head up the Subcommittee on Aviation for this committee. We are attempting to do some things that will improve the safety of flying. I want to confine my questions this morning to that one field, and I hope you will understand that.

First let me ask what is your view of the safety of the air traffic control system today?

Mr. DICKINSON. Sir, I think that's a very significant question. I agree with the position that the Safety Board has taken and has been spoken by the Chairman of the Safety Board, Jim Burnett, that the air traffic control system should not be overloaded and should only be able to handle the number of airplanes that each of the air traffic controllers themselves can handle.

One of the problems that I see specifically deals with the purpose of the air traffic control system—to separate airplanes. What I would like to see is that all airplanes, flying both visual flight rules and instrument flight rules, both participating and not participating in the system be protected from flying into one another. That does not appear to be the case right now, Mr. Chairman, and I hope that the work that the Federal Aviation Administration is doing with the Board's support and recommendations will improve that situation and make it safer for aviation.

Senator FORD. Well, with the changes that FAA is proposing, do you believe the controllers are competent to handle the air space changes?

Mr. DICKINSON. Yes, sir. I think the controllers themselves are competent. What I would hope, though, is that the human element, the controllers themselves, be considered in whatever programs that the Federal Aviation Administration does propose. By that I mean that there is only a certain number of airplanes that an individual person can handle and handle safely. I would hope that that number is not exceeded so if a problem does arise, the airplanes would be able to remain free and clear of one another.

Senator FORD. Do you believe the system is still running on hot, or do you believe it has cooled off a little bit?

Mr. DICKINSON. I think it's warm, Senator.

Senator FORD. Well, it's not hot then.

Mr. DICKINSON. That's correct. I do not think there is a crisis. I do think there are some immediate problems that need to be taken care of. I think the FAA is working on those. I personally would like to see some of the programs brought to bear more quickly, but I am confident that the FAA is working diligently in trying to improve the situation.

Senator FORD. Well, I'm not going to get into the question of whether you think it ought to be independent or not because it might put you in conflict with me and your chairman.

Should there be a mandatory retirement age for planes?

Mr. DICKINSON. Mr. Chairman, the question of older airplanes is not a new issue. Like everything else as it gets older, you need to look at it more closely and maybe take a different view than maybe when an airplane was new coming off the line.

I think there are programs in place that do take aging airplanes into consideration where different inspection procedures and different inspection techniques are being used, to find some of the problems. For example, the frequencies of inspections are decreased as the aircraft get older. I cannot give you a time, whether it's 20 years or 30 years, when an airplane should be retired, but there does come a period when its economic life is over and it should, indeed, be retired. But I believe older airplanes can be safe. Some of the inspection procedures need to be considered in more detail, but I think there are procedures that can be used to make sure that these older airplanes do remain safe.

Senator FORD. That's kind of like my physical. When I arrived at 55, the doctors changed a little bit what they checked on. So, I thought 55 was an age at which they not only changed the type of physical examination they gave me, but indicated that I was beginning to wear a little bit. So, maybe we could change the inspection of the airplanes at least at 15 years, 20 years, 25 years, something similar to that, to paint with a broad brush. And even though a plane may not be worn as badly as another one that is the same age but has been flying more, you probably would catch it in the category if you changed that inspection procedure.

Mr. DICKINSON. One of the things I would like to add to that, sir, is that while the inspections are in place, we have to make sure, and I think the Federal Aviation Administration has to make sure, that the techniques that are available are, indeed, being used.

Senator FORD. Well, let me ask you another question. FAA is currently conducting what we refer to as a ramp inspection—that is, a hands-on inspection—of all Eastern and Continental aircraft. Do you think this is sufficient to ensure that an aircraft is properly maintained?

Mr. DICKINSON. Mr. Chairman, it is the responsibility of the airlines to ensure that their airplanes are in shape, that the pilots and crew are qualified to do the jobs that they are required to perform. I am glad to see that the Federal Aviation Administration is taking the action to conduct these ramp checks. I think it is necessary, and by looking at these airplanes some of the problems that we have read about and you have spoken of I do feel comfortable that the Federal Aviation Administration is taking appropriate action.

Senator FORD. Well, there is some feedback from the Secretary of Transportation that of the 1,300 cards that he received or the Department received from pilots, they were only able to determine six major problems that gave the Department some concern. Does that indicate an overabundance of concern or a PR program, or do you think it really was a consensus of those who fly the craft that there were developing problems?

Mr. DICKINSON. Mr. Chairman, at the time that the Secretary was receiving these 3 by 5 cards, the Safety Board was also receiving similar copies. I have looked through probably 200 or 300 of these, and I think the question is how you define a major problem. Some of these cards do appear as if there are some major concerns, and I do believe that the crew and the maintenance people are concerned. They want to make sure that the airplanes are safe. And I agree that we owe that to the traveling public.

I don't know the reasons why Secretary Burnley said that there may have been only six or seven that were major. But our reading did indicate that there were some problems.

Senator FORD. Of course, it's the responsibility of the crew to fly or not to fly based on their judgment as it relates to the safety of the craft.

Mr. DICKINSON. That's correct, sir.

Senator FORD. And, of course, we put a great deal of responsibility on them. I'm sure the air carrier wants to go ahead and fly and make the money, but the lives of the pilots and crew are at stake and the fellow who wants to make money is sitting in the panelled office somewhere in New York, Dallas or some place like that.

Do you think that FAA should conduct complete ramp inspection for the other carriers?

Mr. DICKINSON. I think since they've started looking at a couple of these airlines, Mr. Chairman, that it would probably be a good idea. This would ensure the traveling public that the Federal Aviation Administration and the Federal Government, is making certain that the aviation system is safe, and if there are problems, that these problems have been uncovered and something is being done to correct them. Yes, sir, I do.

Senator FORD. It's going to take some time to do that with the employees that are available and qualified to make the hands-on inspection. It leads us to another item.

Should we go ahead and fund for additional employees, additional inspectors, so we can continue to do that not just now when we are concerned, but instead have a continual hands-on inspection?

Mr. DICKINSON. Mr. Chairman, if the question is should more funding be provided for more inspectors and more detailed inspections, my personal recommendation would be yes.

Senator FORD. If you could mandate one thing that would improve aviation safety, what would that be?

Mr. DICKINSON. Again, Mr. Chairman, I would have to go back to the comment I made earlier in responding to your question about the air traffic control system. I would like to see the air traffic control system provide collision avoidance for every airplane operating in the sky, whether it's flying VFR or IFR.

Right now the air traffic controllers provide collision avoidance to airplanes that are participating in the system. They will also provide traffic advisories and sometimes potential conflict information to other airplanes that are not participating, if indeed they perceive that a potential for conflict may exist. But at other times when they're overloaded—and indeed, they sometimes are overloaded—they are not required to do that. But the fact that an air traffic controller may be overloaded and cannot provide information does not prohibit an airplane from coming into close proximity to another airplane that is being controlled. I think that is the most critical issue in aviation right now, Mr. Chairman.

Senator FORD. Do you think we ought to try to work out some salary initiative to encourage controllers to go into the more densely populated airports? It's very difficult to get somebody to move from Pensacola, Florida to Chicago at the same salary.

Mr. DICKINSON. Something has to be done because of the personnel and budget constraints that the Administrator is working under. I have heard and read the arguments, and I think they are valid arguments. Living in the Washington, D.C. area, I know how high the cost of living is here. It's one thing to have been raised in Washington, and never having really been exposed to living conditions outside of this area. So, you get used to how expensive things are. For somebody moving from outside of a major metropolitan area it's a big shock. So, something is going to have to be done to ensure that you do get qualified people and people that would be willing to take that risk if the risk is increased cost of living.

Senator FORD. The controller would have some outside stress, wouldn't he, other than his job?

Mr. DICKINSON. I think he would, sir.

Senator FORD. Let me just add one other little item here. Let's talk about rail safety just a minute.

What initiatives would you recommend to enhance rail safety?

Mr. DICKINSON. I think one major issue in the railroad area right now is in the northeast corridor. More work needs to be done in automatic train control systems for both passenger and freight trains traveling on both parallel tracks or shared tracks. I also believe more work needs to be done, of course, in the drug and alcohol area. These are the two critical issues in my opinion in rail safety.

Senator FORD. All right.

Senator McCain, welcome this morning. Do you have a statement or questions?

Senator MCCAIN. Thank you, Mr. Chairman. I have no statement.

Just as a followup to your last question, you said more has to be done in the area of drug and alcohol. Do you believe that means random drug and alcohol testing?

Mr. DICKINSON. That's a very difficult question, Senator.

Senator MCCAIN. We're facing a difficult situation.

Mr. DICKINSON. Very difficult.

I do believe that random testing is a deterrent for drug and alcohol abuse. However, I say that as a non-drug user and one hopefully speaking with a rational mind. I am not sure that random testing would get at the hardcore drug users, and as an example to support this I look back at the accident that the Safety Board investigated in January of 1987 in Chase, Maryland, the Amtrak/Conrail collision. I wonder whether random testing, if it were in place, would have first selected either the brakeman or the engineer and then, second, would have identified a problem with either of the two? Also, I don't believe, because of their condition and what we found subsequent to the accident about their use of drugs, random testing would have been a deterrent to them. They may not even have thought about that—or considered it. They would have taken the risk.

Senator MCCAIN. If I understand you correctly, then you do not support random drug testing at this time?

Mr. DICKINSON. If you're asking me do I, yes or no, I think that random testing does have its merits, but I also believe that, if you're trying to get after the hardcore users, I do not believe that random testing will necessarily identify those people. What I do believe is that for-cause testing, toxicological testing after an accident, prescreening, and annual physicals or periodic checks would, indeed, identify those problems if management is doing the job in overseeing and supervising that they're supposed to be doing.

Senator McCain. Well, I guess we'll move on. But I'll tell you sooner or later, my friend, you're going to have to bite the bullet on this issue. Talk to the parents of some of those kids that were killed in that crash. As far as athletes are concerned, it has clearly been a deterrent to the use of drugs. And I understand that it is a civil liberties issue, and that's why you're being very careful in your response. And I understand that. But sooner or later we're going to have to address this issue not only in rail safety, but in highway safety. If somebody comes up with a better idea than random drug testing, I'd sure like to hear it. But I think the evidence is clear that use of drugs and alcohol is all too frequent on America's rails and we are endangering the lives of innocent, nondrug users.

Let's move on to aviation safety, if I could. The right answer to Senator Ford's question about the most important thing that could be done in aviation safety, Mr. Dickinson, was passage of his legislation making FAA an independent agency.

Mr. Dickinson. Excuse me, Senator. The Chairman told me he would not get into that, and that is why I——

Senator Ford. I didn't want to put him on the spot, John, because the Chairman of the National Transportation Safety Board is a good soldier and, therefore, he's following instructions.

Mr. Dickinson. That's not true.

Senator Ford. Well, you let me have my opinion and you can have yours. And I'll cast my vote.

Mr. Dickinson. I'm sure, sir.

Senator McCain. Thank you, Mr. Chairman.

In a hearing that we had about a year ago on this issue, and I'm sure we will have other hearings in the future which you may be involved in on aviation safety, the Chairman, Mr. Burnett, stated that there were areas of the country which were unsafe for aviation. That certainly is a very disturbing statement, to those of us who use airlines every weekend. I asked Mr. Burnett if he would identify what areas of the country were unsafe, and he, for reasons that are still not clear to me, could not do so.

Do you believe that there are areas of the country that are unsafe at this time?

Mr. Dickinson. Senator, I think, as I responded to the Chairman's similar question, there are at times areas throughout the system where the airspace does become overloaded and then, indeed, does become serious, where an air traffic controller is trying to handle too many airplanes and cannot. And for whatever reason, this information is not passed on so that flow control or some other means would be able to slow down these airplanes from coming into the various sectors and reduce the congestion.

I also think that the philosophy of how airplanes are controlled needs to be reexamined. The Federal Aviation Administration needs to take a hard look at the concept of see and avoid. I personally have a lot of problems with that concept. I know it's a concept that is as old as aviation itself, but again maybe it's time that it be reexamined to see if, indeed, see and avoid is the way to go. There are places in the country where that is the only means available, but I do not think it is always the safest way.

Senator McCAIN. Do you feel that the American people should be informed of areas of the country that are unsafe?

Mr. DICKINSON. Senator, I don't know if I could say there are specific regions of the country that are unsafe. It's a dynamic situation. The environment is constantly changing. The airplanes are moving. So, there are areas and times where it does become overloaded.

A part of the job of the Safety Board is to alert the public of potential problems, not to alarm, but to alert them. And while the Safety Board, though, can identify problems—the information feedback is not that real—time that you can quickly pass that information on to the traveling public. But the information needs to be absorbed by and examined by the Federal Aviation Administration so that remedial action can be taken.

Senator McCAIN. Well, frankly, it was very alarming to me to know that in the opinion of the Chairman of the NTSB that there were areas of the country that were unsafe. Since I travel around most of the country, I would have liked to have heard what those areas are. I would like to know, Mr. Dickinson, if you believe that there is an area of the country that is unsafe for American citizens to fly in. Would you be willing to identify those areas for this committee?

Mr. DICKINSON. Senator, of course, I would be willing. I could not identify what those areas are. And I was not privy to the information that the Chairman gave. I do not know what areas he was speaking of.

Senator McCAIN. Thank you.

Finally, on this issue of Eastern Airlines, which has obviously been the subject of a great deal of attention. Mr. Chairman, I had a visit a week and a half ago from a group of eight senior Eastern Airline pilots. They came to my office. They were very upset about the situation and the depiction portrayed by some as the status of the safety of Eastern Airlines. They also were concerned about the flood of postcards that were coming in and that there was little or no sufficient reason for those complaints to be lodged. I see the possibility of a very serious problem here. If a barrage of postcards come in indicating there is a safety problem, which is not, indeed, a potential hazard, and there are other hazards out there, you've only got so many people who can inspect and follow up on these allegations.

And Mr. Burnley and Mr. McArtor mentioned that only six or seven of some 1,300 complaints were actually serious situations. I was concerned, and then I was doubly concerned, when these Eastern Airline pilots came in and told me the same thing. One of them told me about a copilot that he had that had a DME that required mileage to be—accuracy was 100 miles, and this DME was only 80 miles. So, he refused to fly the airplane. That is just not what this is supposed to be all about. If they keep doing this in my view—and I've told the ALPA people—then they are going to lose credibility as far as their real concern for aviation safety is concerned, and lose more confidence on the part of the flying public.

I would like you, following up with what the Chairman was asking about, to provide this committee with some more information as to how many of those safety allegations or safety reports are, indeed, in the view of the NTSB valid ones and what you think the impact of these might be on overall aviation safety. If you have 1,300 reports and you're tracking down every one of them, and a lot of them are not valid, which is what Mr. Burnley alleges—I don't take either position, but that's also what a group of Eastern Airline pilots alleges to me—then we could miss some very serious safety problems that may exist that may be lost in the whole blizzard of reports here. So, I would appreciate it if you could provide this committee with a little more in-depth study of whether those 1,300 safety reports, if that's what you call them—I believe they're called——

Mr. DICKINSON. I don't know the specific title, but we are familiar with them. The Safety Board has received the copies.

Senator McCAIN. As to what percentage of those actually were valid and which were not in the opinion of NTSB. I'd appreciate it if you would provide that information to this committee.

Mr. DICKINSON. Yes, sir.

Senator McCAIN. Thank you very much, Mr. Chairman. And I congratulate you on your selection and look forward to the opportunity of working with you.

Mr. DICKINSON. Thank you, Senator.

Senator FORD. Thank you, Senator McCain.

Let me pursue just one moment these cards. Secretary Burnley said, as we've mentioned before, 6 or 7 of the 1,300 were major ones. Yet, you said that when you read more than 200 cards that they appeared to be serious. And I don't know that NTSB has followed up on any of that. Are you leaving all the inspections to FAA and then report back to you? Or do you get the findings from FAA? Will that be the way you will look at the criteria based on the cards versus the aircraft?

Mr. DICKINSON. Mr. Chairman, I don't think there has been a specific procedure set up how the Safety Board will interact with the Federal Aviation Administration on these cards. The Safety Board, of course, is very concerned about what the pilots, and the maintenance people are saying about their airplanes and aircraft in any situation.

I think the Safety Board will have to either have the Chairman talk to the Administrator or possibly have the Board members brief the Federal Aviation Administration to determine what they are finding. But there needs to be a dialogue between the two agencies so that if, indeed, there is a problem, that something can be done about it.

Senator FORD. The bridge here somehow or another bothers me just a little bit, and I don't know how to say it, the bridge between major and minor problems and the notification. What, in your opinion, is a minor infraction that allows you to go ahead and fly the plane for the next so many stops before getting to a maintenance area for repairs? What is a minor? What is a major? How long would it take a minor to become a major problem? How soon should you have certain things fixed because, as I understand it, the airline itself will set the criteria as it relates to something that appears to be wrong with the aircraft.

What transpires that is a minor adjustment and can be done at the next maintenance stop which may be a week or 10 days away? Do you have any category for those things?

Mr. Dickinson. I think it's difficult for me personally. I've not had that close hands-on experience trying to identify what these problems are. But there are various problems, of course, as you both know.

There are minimum equipment list items that have to be satisfied before an airplane can take off. And at other times there may be items that even though they're on the MELs, the airplane may fly and they are not corrected. For whatever reason, sometimes that happens.

The minor items that you just identified, Mr. Chairman, are things that I would hate to see a pilot or a first officer write up as being related to a safety function or a safety problem.

Senator Ford. But what are safety functions? I mean, what do you call a minor safety function and a major? If the hydraulic system goes out, that's one thing.

My son and daughter circled Memphis for about two hours the other day to get all the gasoline out because the hydraulic system light was on. My daughter-in-law determined that she would get a car and drive home instead of traveling on to Denver. But that was a major item, because it occurred after the aircraft was airborne.

What I'm concerned about is what led up to that. Is there some minor infraction that was delayed for repair and created a large malfunction?

Mr. Dickinson. I understand your concern, Mr. Chairman. You asked me for an example of a minor issue or minor problem. Maybe, a hazard light for a certain piece of equipment. The light may give you an indication that it's nonfunctional or it's not functioning correctly, but the crew, indeed, knows it is functioning. From a human performance standpoint, the indication would lead one to say that the system is not working properly, but physically the crew knows that piece of equipment is working. That may be considered a minor infraction or a minor problem. But it's one that if the crew left the airplane at the next station and another crew got on and they saw that that the indication was on, they would also assume that the equipment was not working properly, they'd have to go through the same process. And eventually you start building up a false sense of security. You are getting bad readings on your instruments when, indeed, nothing is wrong.

Senator Ford. I lean very heavily on Senator McCain's experience and background and how he feels about certain things relative to aviation safety. I cannot match his experience and expertise in this field.

The only thing that bothers me is that if my automobile continues to get hot, and I have to stop every so often and put water in the radiator, that at some point that radiator is going to go and I'm going to be out here in the middle of nowhere. I need to go get it repaired. How long can I drive the car before the hose blows or whatever it might be under those circumstances?

A minor item is it got a little warm, so I stopped and put some water in it or another quart of antifreeze. But how long will that last? That's a minor thing, but it indicates something major is going to happen or you need major repair. How long can you fly it till you get to a maintenance center? That bothers me some.

And you know, maybe we're dotting I's and crossing T's here, but the responsibility of safety is going to come back on you. It's going to come back on us and the Administrator of the FAA. And somewhere in this mix, we are all going to get tired with the problem if we don't maintain some kind of pressure in order to see that maintenance is at its very best.

So, I agree with Senator McCain. I look forward to your quick confirmation, and look forward to working with you and hope that when we call upon you, that you will be willing to come up and visit with us at hearings from time to time.

Mr. DICKINSON. I'd be glad to, Mr. Chairman and Senator, at anytime.

Senator FORD. Do you have anything?

Senator MCCAIN. Just one comment. I am obviously talking off the top of my head, and perhaps it would be a function of the FAA to make those decisions rather than the individual airlines. And it might be interesting to find out how it varies from airline to airline as to what each views as a minor or major maintenance problem.

Do you have any comment on that, Mr. Dickinson?

Mr. DICKINSON. Senator, the Safety Board really hasn't taken a hard look at that. Our major function, as you know, is in accident investigation. Unless we see some trends or some problems resulting from the accidents we have investigated, no, sir. I cannot comment on that.

Senator FORD. The old saying, an ounce of prevention is worth a pound of cure. That's spelled C-U-R-E. People have a hard time understanding my southern English, you know.

This hearing is adjourned.

Mr. DICKINSON. Thank you.

[Whereupon, at 10:36 a.m., the committee was adjourned.]

[The questions and answers follow:]

Pre-Hearing Questions Submitted by the Majority
for
Lemoine V. Dickinson, Jr., Nominee for
National Transportation Safety Board

General/Background

1. You have served for the past six years as special assistant to the Vice Chairman of the National Transportation Safety Board. What would you say has been your major contribution to transportation safety in that period?

Response:

During the past six years I have had the fortunate experience to work very closely with the Vice Chairman of the Safety Board, Patricia A. Goldman. I believe that Ms. Goldman was recognized by Congressional, Federal and industry officials in all modes of transportation to be an effective and influential Member of the Safety Board. As her assistant, my function was to advise her on various safety issues, support her at accident investigations and hearings, and provide technical expertise to support her decisions. However, my position was to be invisible but at the same time loyal and responsive. I think I accomplished those and would hope that, without taking anything from her, my assistance was invaluable in performing her duties as the Vice Chairman and therefore contributed to transportation safety.

I also believe that I was instrumental in improving the communications among the staff, special assistants, and Board Members. In this regard I have developed a very good working relationship with the staff members. I believe that, if confirmed, this relationship will be invaluable to me to continue working closely with the staff and other Board Members in a collegial atmosphere.

2. Do you believe you have any unique qualifications for the job? Other than your work at NTSB, what technical experience have you had in the area of transportation safety and regulation?

Response:

Yes. I believe my educational background together with my professional experience in addition to that gained at the Safety

Board uniquely qualifies me for the position of Member of the National Transportation Safety Board.

I hold a doctorate in Civil Engineering from the University of Maryland. My dissertation was in the highway safety area, specifically pedestrian safety. Following graduation in 1975, I continued teaching transportation planning and traffic engineering at the University of Maryland while working as a research engineer on automated transit systems for the MITRE Corporation. I have conducted research in accident analyses and published numerous papers dealing with hazardous highway accident locations.

While employed with the Office of Technology Assessment (OTA) I was the project director on several assessments conducted for the U.S. Congress. The first was an assessment of the Federal and industry efforts to improve the safety of U.S. railroads. This project, mandated by the Railroad Safety Act of 1976, was accomplished through the cooperative effort of both railroad management and labor working together to identify railroad safety problems. Other projects, while not specifically safety analyses, examined the feasibility for future advanced highspeed aircraft and an assessment that was to examine the needs and requirements of the future airport and air traffic control system.

As an assistant to the Deputy Secretary of Transportation I was responsible for keeping him apprised of the major programs being undertaken by both the Federal Aviation Administration and the Federal Railroad Administration. With regard to the FAA, my major responsibility was to become familiar with and track the progress within the National Airspace System Plan and provide questions for the Deputy Secretary for each technical program presented to the Transportation System Acquisition and Review Council (TSARC). My responsibility within the Federal Railroad Administration was to stay abreast of and report to the Deputy Secretary on two areas--railroad safety and research and development. This included a comprehensive review of the FRA's five-year system safety plan and the R&D programs being conducted in-house at the FRA Track and Test Center in Pueblo, Colorado.

I am a registered professional engineer in Virginia and Maryland and have continued to teach part-time in the Civil Engineering Department at the Catholic University of America.

3. When you were Special Assistant to the Deputy Secretary of Transportation, you say you "oversaw both the Federal Aviation Administration and the Federal Railroad Administration." In what policies or initiatives did you play a role?

Response:

In addition to those points mentioned in question 2 while in the Office of the Secretary, I also initiated a project which examined the role of safety in the Office of the Secretary. The project began to examine the safety offices and functions within the various modes to determine if a better way could be devised to share safety information across modes. Although I left to come to the Safety Board before the project was completed, I was subsequently told that some of our findings were used by the staff in the Safety Initiatives Task Force conducted under Secretary Dole.

4. What would you like to accomplish during your term at NTSB? What areas do you intend to focus on?

Response:

I have thoroughly enjoyed my six years with the Safety Board. While this is a small agency, it is a very important one and one that has a critical mission. It is the Federal "watchdog" of transportation safety and owes its worldwide respect to the highly professional and dedicated staff that the Board has. I am proud to be associated with them and, if confirmed, would like to accomplish the following:

-- An increased use of computer graphics in our accident investigations and analyses.

-- Improved communication between Safety Board staff and Members.

-- An increased awareness of the Safety Board's work and respect for our headquarters and field personnel.

-- Enthusiastic representation of the Board's safety work through public speaking, testimony, and written articles.

-- A continued emphasis into the human performance issues of transportation accidents. I believe that Dr. John Lauber has provided valuable insight into this area, especially in aviation, and I would like to see an increased effort in the other transportation modes.

-- A greater awareness of the Safety Board in areas outside, but related to, transportation issues. The policies, procedures, and investigative tools we use can most certainly be used in solving other nontransportation problems.

-- More focused and manageable studies in special safety areas.

-- A better working relationship between the Safety Board and the Department of Transportation. While we must always recognize our independence, we can improve our working relationship toward a common goal of improving transportation safety.

With regard to the areas that I intend to focus on I would like to use my experience to further improve the safety of our highway and railroad systems. I believe that the Board has considerable expertise in aviation and I would like to see what we have learned in aviation be transferred and utilized in the surface modes. This is especially true in the human performance area where the "why" of an accident occurrence is much more important than the "what." I see a need for increased emphasis on bridge and highway maintenance. With the construction of the interstate system about complete, maintaining the existing infrastructure will be paramount. Several recent accidents have highlighted the importance of this safety issue and the ineffective inspection work that has been conducted. Increased maintenance also has associated with it the possibility of increased construction injuries and fatalities resulting from motor vehicle accidents. Therefore, construction and work zone safety will also continue to be important safety issues on which I would like to provide my expertise. I am also concerned about the safety of heavy trucks on our highways, and would like to focus attention on particularly driver training and qualifications, alcohol and drug involvement, duty time, and the safety implications of double bottom trailers. Also, there needs to be an increased emphasis in the railroad industry with regard to automatic train control of passenger and freight trains.

5. What do you consider the most critical safety issue in each of the industries: aviation, rail, motor carrier, maritime, and pipeline?

Response:

In the aviation system the most critical safety issue is the lack of the air traffic control system to provide assurance that both VFR and IFR traffic will remain free and clear of one another. This will not be accomplished until we have a collision avoidance system as well as an air traffic control system that will be able to account for human error and mistakes. Several Safety Board accidents have documented the problems with the see-and-avoid concept of separating aircraft and while sometimes this is the only means available to separate traffic, it is by no means a perfect solution. Another critical issue is the high number of accidents resulting from human performance errors that continue to occur. Numerous Safety Board investigations have identified the negative consequences of fatigue, complacency in the cockpit, inattention to instruments, poor monitoring techniques, lack of communication among cockpit crew members, distraction, pilot training, lack of experience, crew pairing, and other human errors. Continued effort must be placed in these areas.

With regard to rail safety I believe the most critical concern is that of the drug and alcohol issue. Another major problem is the need for increased emphasis in the use of automatic train controls as discussed in question 4.

As I have addressed in question 4, I believe that the most critical issue in the motor carrier industry is the deterioration of both the roadbed and bridges on which vehicles travel. Another critical issue is the need for specialized training for drivers of hazardous materials and specific licenses for these drivers. We have found in many of our accidents that drivers can take immediate action at the scene of an accident if they are trained on what to do. They should be prepared to provide an initial response to an accident to protect the public and be trained to effectively interact with emergency people when they arrive.

In the maritime industry, the most critical safety problem appears to be that of uninspected commercial fishing vessels. Our accidents have shown a continued lack of both a safety awareness, and equipment, for these vessels.

In conclusion, in the pipeline industry there are several critical safety issues. There is a need for a much improved employee training and qualification program for those personnel involved in safety related activities. The industry is rapidly changing from the times when experience was gained througn on-the-job training. Now, because of increased turnover of personnel, on-the-job training is not a viable means of training and better solutions must be found. In this regard, the Research and Special Programs Administration (RSPA) has proposed an Advanced Notice of Proposed Rulemaking (ANPRM) for improved training and qualifications for employees. Another critical issue is the damage which results from excavation activities. Whether this is due to the inaccuracy of construction or utilities maps or just basic poor communications, the Safety Board has documented several accidents during construction activities. And, finally, the cathodic protection requirements for pipelines are not adequate. A good example is illustrated by natural gas and liquid pipelines. While in some instances there is a reason for different standards for these two systems, depending on various situations, it is not true with regard to cathodic protection. Those safety problems that are the same for both should be treated equally.

Although the issue of hazardous materials crosses all modes, I will address two major problem areas under the major heading of pipelines. The first is a need for the States to identify specific routes for hauling hazardous materials. In addition, the Safety Board believes that the Federal Highway Administration should be responsible for coordinating these hazardous materials routes between various States. Secondly, the DOT classification standards do not reveal the real hazards presented by specific hazardous materials. A good example is that of anhydrous ammonia which is classified as a nonflammable gas. While this is true, its more accurate classification would be that of a poison. To put this in perspective, carbon dioxide (CO_2) is also classified as a nonflammable gas; however, it is much different than anhydrous ammonia.

6. How have the Department of Transportation and the various industries responded to NTSB recommendations? Do you have any suggestions for improving the process? Should recommendations be made mandatory?

Response:

Over the six years I have been with the Safety Board I have seen a significant improvement in the timing of the initial substantive response and the final close-out and acceptance of our recommendations.

An examination of data over the period of calendar years 1981-1987 shows that in calendar year 1981 the average days to first substantive response for all the agencies within the Department of Transportation was 207. In calendar year 1987, however, this average number had been reduced to 70 days. The average number of days to a closed acceptable action has been reduced from 860 in calendar year 1981 to 186 in calendar year 1987, a significant improvement.

With regard to the acceptance rate of NTSB recommendations by each agency within the Department of Transportation and various industry modal groups, I offer the following:

DOT Acceptance Rates

DOT (Sec'y)	71%
FAA	77%
FHWA	79%
FRA	62%
MARAD	70%
NHTSA	70%
RSPA	65%
UMTA	85%
USCG	72%
Total	74%

Industry Acceptance Rates by Mode

Aviation	95%
Highway	88%
Rail	76%
Marine	71%
Pipeline	97%
Total	80%

The Safety Board has recently implemented new procedures to further improve the timing and close-out of our recommendations. One of those practices is to eliminate excessive numbers of letters going back and forth to an agency trying to persuade them of the value of our recommendations. As it is now, if we haven't received a response after a certain period of time (Federal agencies are required to respond within 90 days), our recommendations staff people will call and "nag" over the telephone. If we're successful, this usually generates a positive response. If not, we subsequently close out the recommendation in an unacceptable action. This has decreased the paper work necessary to bring us to the same decision, and also has brought us to that decision point in a much shorter time. We are hopeful that this follow-up procedure will continue to streamline our recommendation process.

I am not in favor of making our recommendations mandatory. One of the reasons I believe the Safety Board is so well regarded is because it can be and is objective in conducting accident investigations. The strength of our recommendations lies in our ability to collect accurate data, conduct a thorough investigation, and perform a professional technical analysis of the facts. If we can do all three of these and do them well, then I believe our recommendations will be accepted by those to whom we make them. It has been said before that the Safety Board regulates by "Raised Eyebrows" and this is the only type of mandatory recommendations that I would suggest.

Deregulation

7. Do you believe deregulation has led to any erosion of safety? Do you think this is an area that merits the attention of the NTSB?

Response:

Yes, I do. The Safety Board has stated in the past that, while the system is safe, the margins of safety have decreased. Again while I agree, I need to fully explain what I mean. Deregulation was responsible for the major growth we have seen in our transportation system over the last several years. And while this growth has been seen in other modal areas besides aviation, I will limit my remarks to just aviation. To quote some statistics, last year the scheduled airlines carried 450 million passengers. That is an increase of almost 10 percent over 1986 and a 50 percent increase over 1979. There are more people traveling now than ever before because of deregulation. This is all good news.

The bad news is that this explosive growth in travel demand has caught us off guard. We are having to contend with problems in a very dynamic environment. And we are now just beginning to get ahold of the situation. As more people travel, the potential for conflict may increase just because of the greater demand. For example, operational errors (both pilot and air traffic controller), near midair collisions, and runway incursions have increased. In 1986 there were 484 near midair collisions involving air carriers--an increase of 41% over 1986 when there was 343.

But my feeling is that a safe system can be attained in any environment, whether it is regulated or deregulated. I do not believe, however, that a continued look at the sheer numbers of accidents or incidents over the years, both before and after deregulation, provides a good statistic on which to measure the benefits and/or disbenefits. We all know that analysts have used the same accident statistics to support opposite positions on the question of what effect deregulation has had on safety.

However, I do feel that there are very critical areas, especially in the aviation system, that have resulted from this explosive growth and do need to be looked at and I believe are being examined. These include pilot training, lack of experience, cockpit resource management, the air traffic control system, ... The Safety Board is very concerned about all of these areas and has identified many of them in its accident investigations and will continue to examine and recommend solutions to reduce the problems. However, the question of whether or not these problems have resulted directly from deregulation or from some other source is not, in my opinion, the main concern. I believe the Safety Board as well as the Department of Transportation, the Congress, and the transportation industry need to continue to keep a careful watch of any negative effects on safety stemming from this tremendous growth and make necessary and immediate changes to insure the public of a safe and efficient transportation system.

Drug Testing

8. What is your view of testing for drug and alcohol use? Do you believe random testing is a deterrent?

Response:

I agree with the Safety Board's position that no alcohol or drugs should be allowed in any mode in the transportation of people or goods. I also believe that the FRA rule is a good model for Federal regulation to be built upon to reduce and prevent alcohol and drug use in the transportation industry. The idea of mandatory post-accident testing is necessary to determine the extent to which alcohol or drugs could possibly play in the cause of an accident. In my opinion this toxicological testing could include any person who may have had an influence in the operation of the transportation system--such as vehicle operators, dispatchers, air traffic controllers--and others who may be involved in activities after an accident--these would include emergency response personnel, flight attendants, and train conductors. The use of prescreening testing, reasonable cause, and periodic tests (such as during annual physicals) in addition to post-accident testing are also good approaches to identifying these problems.

With regard to random testing, I am aware of the arguments for and against this type of program. Personally I believe that it would be a deterrent to continued alcohol or drug use. However, I state that as a nondrug user and one with a rational mind. But it is unclear to me whether random testing would indeed be a deterrent to a habitual drug user or alcohol abuser. This may not be as strong a factor in deterrence to someone who is not acting rationally. As an example, I would cite the Amtrak/Conrail accident at Chase, Maryland in January of 1987. The possibility exists that a random test would not have selected either the engineer or the brakeman on the Conrail locomotive and therefore not have identified the problems of either employee. Nor do I think random testing would have deterred either from abuse. But I do believe that reasonable cause testing or periodic testing could have identified a significant problem beforehand.

Finally, the real reason for testing is to identify those persons in the transportation industry who have a problem and then provide them with treatment. Therefore, I fully support the Board's position on alcohol and drug rehabilitation and educational programs in all modes of transportation.

Aviation

9. The past few years have been viewed by many as times of crisis in aviation safety attributable partially to a rapidly expanding industry, shortage of fully qualified controllers, lagging technology, limited capacity. Do you believe there is a crisis in aviation? To what do you attribute it? What can or should be done to ease it?

Response:

I do not believe that there is a crisis in aviation. However, I also believe that the problems you identified--shortage of fully qualified controllers, lagging technology, limited capacity, and the rapidly expanding industry--are real and ones that are being addressed. As I indicated in my response to question 7, the enormous growth in the aviation industry we have seen since deregulation in 1979 basically caught us off guard. And it has taken those many years and a lot of hard work and Congressional support to turn things around.

With regard to the air traffic control system, I am fully supportive of the Board's position that the Federal Aviation Administration ensure that the ATC system successfully perform its primary mission of collision avoidance. When at certain times the capacity of the air traffic control system could be exceeded, the FAA must take appropriate means beforehand rather than waiting until the problem becomes critical. I am hopeful that some of the programs, such as the aircraft situation display (ASD) will be very beneficial in this regard. I also believe that when the prediction capability of this program is finalized, the FAA will be in a much better position to be proactive in identifying a capacity problem rather than reactive.

One of the areas that has been highlighted by several recent Safety Board accidents is that of midair collisions between two aircraft--one participating in the ATC system and the other not (basically flying VFR). We have seen in those cases where the concept of see-and-avoid has not been sufficient to keep those aircraft separated. At the same time, I am fully aware of the many demands that are placed on the air traffic controllers which does not allow them to provide traffic advisories to every aircraft to keep them separated. The FAA's ongoing efforts regarding terminal control areas (TCAS), Mode C requirements and TCAS, will hopefully improve some of the problems we've seen. But for the air system to be entirely safe, more has to be done to protect all aircraft.

With regard to limited capacity, under the present system the FAA establishes performance standards which account for only the physical characteristics of the airport. In essence the capacity is limited by the amount of concrete. I am in agreement with the Board's position that capacity be measured in terms of the ability of each air traffic controller to handle a certain number of aircraft. This would provide a more realistic volume in analyzing airport capacity.

In conclusion, the tremendous growth we've seen in aviation has brought with it new problems in training, pilot experience, controller workload, maintenance concerns. . . . The list goes on. It is only through a coordinated and cooperative effort by all participants that will allow us to see improvements in the airports, airspace, and air traffic control system which then will be able to handle the demands being placed upon it.

10. Many believe that the Department of Transportation hampers the FAA in fulfilling its mission of safe and effective operation of the national airspace. Would safety be improved if the FAA were independent of DOT oversight? Why or why not?

Response:

As an engineer, I have been taught and used numerous times a systems approach to analyze difficult problems. The question of whether the FAA should be independent of the DOT is indeed a most difficult problem to solve. But, there is no question that some changes must be made--I think we can all agree on that. However, in using a systems approach objectivity must be paramount. Also, in following this format in deciding the best approach to the end, there are certain objectives that hopefully will be attained. These include that the FAA Administrator must be able to manage the organization in an efficient and effective manner. He or she must be removed from the political pressures that we have all witnessed. The Administrator must also be able to manage the work force under his or her authority. This will require numerous changes in the personnel requirements and procedures. Finally, the Administrator, who is responsible for providing a safe and effective aviation transportation system, must be able to implement technological improvements in a timely manner. This means that changes have to be made in the budget and procurement cycles so that these technological improvements needed to keep the system safe and effective do not get bogged down in red tape and a cumbersome bureaucratic process.

These are all goals or objectives which must be met if we are to continue to have the safest aviation system in the world. There are several alternatives that have been suggested to allow the FAA the means to fulfill its mission of providing a safe and effective operation of the national airspace. Each appears to have merit in its own right. Those in favor of keeping FAA within the Department of Transportation argue that its removal would greatly reduce the clout of having a Cabinet level person working on its behalf and would greatly reduce its leverage on safety matters. Others who-favor the FAA's removal argue that this would eliminate the interference and sometimes confrontational disagreements between the two groups. I personally can see the worth of each.

I am very concerned, however, that, whatever decision is reached, it be considered in the total context of providing a balanced, coordinated, and comprehensive aviation transportation system that will provide the American public a safe means of travel.

Rail Safety

11. The NTSB made some recommendations following the January 4, 1987 collision between Amtrak and Conrail. Could you comment on the responses of the Federal Railroad Administration, Amtrak and Conrail to these recommendations?

Response:

On January 15, 1987, following the collision of an Amtrak passenger train and a Conrail locomotive consist on January 4, the Safety Board issued three recommendations to Amtrak. Those were:

> Immediately initiate a program which will assure that all locomotives operating on the high speed passenger train trackage of the Northeast Corridor are equipped with a device which will control the train automatically as required by the signal if the engineer fails to do so.

> Pending the installation of the automatic train control devices or an equivalent positive control system on all locomotives operating on the high speed passenger train trackage of the Northeast Corridor, require the operators of locomotives and trains not equipped with such devices to stop before entry onto the high-speed tracks regardless of signal aspect, and to request and receive permission before proceeding.
>
> Require all locomotives allowed to enter and operate on the high speed passenger train trackage of the Northeast Corridor to be equipped with an operable radio capable of train-to-train and train-to-fixed station communications.

On April 7, 1987, Amtrak told the Safety Board that it agreed with the intent of the first recommendation for automatic train controls (ATC) on the Northeast Corridor (NEC), and that Amtrak had begun negotiations with other railroads using the NEC for the installation of the device on their equipment. Amtrak did not agree with our second recommendation stating a rule of this nature would not be effective because operating personnel would just as likely disobey this rule as they would disobey the rule to stop at signals displaying stop aspects. Amtrak also claimed compliance would unduly restrict movements. The Safety Board is not persuaded by Amtrak's arguments and is carrying this recommendation in an "open-unacceptable" status.

With regard to the third recommendation, the Safety Board has classified this as "open-acceptable action" because Amtrak has agreed that two-way radio communications should be installed on all trains traveling in the NEC.

On November 19, 1987, the FRA adopted an Order that would require all locomotives and self-propelled cars on the NEC be equipped with ATC by January 1, 1990. The Safety Board was informed by Amtrak in December 1987 that the first installation was completed in November and that Conrail was beginning to test prototype ATC systems for freight trains. Amtrak also stated that its trains between Philadelphia and Harrisburg were equipped with ATC and, if the FRA extended its Order, it would work with both freight and commuter rails in this regard.

The Safety Board is in favor of extending the FRA Order to cover operations not only from Philadelphia to Harrisburg, but to all connecting NEC railroad lines as well.

On January 25, 1988, the Safety Board adopted the accident report on the Chase, Maryland accident and issued several more recommendations to Amtrak as well as to the Federal Railroad Administration and Conrail. These are as follows:

--to the National Railroad Passenger Corporation (Amtrak):

Provide procedures and instructions to dispatchers to avoid operating trains not equipped with automatic safety backup devices in a manner that places them in potential conflict with passenger trains at converging interlockings.

Revise the Northeast Corridor timetable to eliminate the possibility of misinterpretation of maximum permissible speed rules.

Expand and intensify supervision and management of train operations on the Northeast Corridor to include mandatory speed and signal compliance checks and regular supervisory crew fitness checks at reporting points and improve enforcement of compliance with the requirements of postaccident testing of employees for alcohol and drugs.

Reassess and restructure its safety program to provide a greater role for safety consideraitons in all aspects of its operations.

Discontinue immediately the use of nonautomatic train control equipped locomotives in corridor work train service.

Modify the wayside signals so that horizontal (stop) aspects are displayed by red lights.

Provide local emergency forces along the corridor with data on the structural details of locomotive and passenger cars and information on extrication tools that are adequate for use with those cars.

Develop and implement a procedure for the written notification of dispatchers and traincrews when train speeds are restricted.

Modify the emergency exit window sunshade frames inside Heritage cars so that the emergency windows can be removed quickly.

--to the Consolidated Rail Corporation (Conrail):

Expedite the current program for installing automatic safety backup devices on your fleet of locomotives.

Improve its procedures for inspecting and testing automatic cab signal apparatus at Chicago and other initial terminals.

> Modify the locomotives so that cut-out cocks for the automatic control system and safety control systems cannot be accessed by traincrews while they are enroute.
>
> Improve the methods of identifying employees who abuse alcohol and/or drugs.
>
> --to the Federal Railroad Administration:
>
> Expand and intensify its oversight of Amtrak's operating practices, supervisory efficiency checks, and compliance with Federal safety regulations (including the requirements for postaccident toxicological testing, and periodically provide the Safety Board with its assessment of Amtrak's performance in these areas.

Because of the recency of these recommendations I am not aware that the Safety Board has as yet received any responses.

Pipeline Safety

12. How do you view the response of the Research and Special Programs Administration to the NTSB recommendations following the 1986 pipeline accident in Mounds View, Minnesota?

On August 13, 1986, the Safety Board made an urgent recommendation to the Research and Special Programs Administration resulting from the liquid pipeline accident on July 18, 1986 in Mounds View, Minnesota:

> Amend Final Order CPF No. 3541-H to Williams Pipe Line Company: (1) to require the development and the submission to the Research and Special Programs Administration for its approval of a plan for testing line 2N that incorporates the findings of research into the pressure reversal phenomenon and that includes a test pressure level capable of eliminating potentially harmful defects; (2) to require metallurgical testing of all seam failures unless the failure mechanism is determined visually by an independent metallurgist; and (3) to establish a maximum allowable operating pressure based on the results of the tests.

On August 22, 1986, the Office of Pipeline Safety (OPS) within RSPA issued an amended final order which, to a large degree, satisfied the Board's concerns. Specifically, OPS required Williams Pipe Line Company to:

(1) metallurgically examine all failures that occurred during the hydrostatic test, (2) not operate the line without the approval of the OPS and the completion of an operational reliability analysis, and (3) operate the line at a pressure no greater than 900 psig. The amended order did not exclude corrosion as a causal factor. The operational reliability analysis was designed to perform six functions: (1) establish the causes of any failures due to the hydrostatic test, (2) establish a relationship between defect size and pressure at failure, (3) establish representative fracture toughness and crack growth rate, (4) review research on pipeline monitoring inspection methods, (5) develop a basis upon which to establish a maximum operating pressure (MOP), and (6) estimate the safe operating life at this MOP.

Because of the action taken by RSPA and because of additional information the Board received from metallurgical testing and cathodic protection monitoring records from the Williams Pipe Line Company, the recommendation was placed in an "open-acceptable action" status. This information was transmitted to the Administrator, RSPA, on November 17, 1986, stating that the final disposition of this safety recommendation would be taken after all relevant metallurgical and hydrostatic testing data became available. There has been no communication since then.

Following adoption of the Board's report on July 20, 1987, seven additional recommendations were made to the Office of Pipeline Safety and one to the Office of the Secretary of Transportation to increase the inspection capability of the Office of Pipeline Safety. In December of last year RSPA responded by requesting additional time which was needed to evaluate our recommendations. That has been the last correspondence.

Although the Safety Board has received no official response from RSPA, we are encouraged by some of the testimony and presentations given by the Administrator in support of our recommendations. For example, the RSPA is on record before the Senate Appropriations Committee Subcommittee on Transportation on March 17, 1988, stating changes that have been made in the management of their enforcement program. They have implemented an operator inspector unit concept whereby all pipeline operators which RSPA inspects have been divided into inspection units. They have stated that this concept will assure that each part of a pipeline system will be inspected on a periodic basis--on an average frequency of 2.5 years.

They also have implemented the pipeline inspection priorities program in their regional offices and have revised the agency's enforcement practices to achieve more uniform nationwide enforcement. They also are considering additional rulemaking to include training and qualification standards for personnel involved in the operation and maintenance of gas and hazardous liquid pipelines; requirements that pipeline maps and records be maintained to show the location and pertinent characteristics of pipelines, and that the information be provided to State agencies for emergency response purposes; requirements for greater specificity in natural gas operation and maintenance procedures; and possible hydrostatic testing of certain hazardous liquid pipelines.

It is hoped that some of this information will be relayed to us shortly so we can take appropriate action on our recommendations.

POSTHEARING QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS

Bridge Replacement and Rehabilitation

On April 26, NTSB released a study concerning the safety of bridges. NTSB made recommendations about the need for increased inspections of bridges. Do you think that we are doing enough in this area? The NTSB did not make any recommendations about whether we are spending enough on bridge rehabilitation and repair. As a member of the Safety Board, would you expand the scope of this study to answer the question about funding needs?

Response

On April 26, 1988, the Safety Board approved the highway accident report on the collapse of the New York Thruway (I-90) Bridge over the Schoharie Creek. This bridge collapse occurred on April 5, 1987, and the report documented the facts and circumstances surrounding the accident and the analysis which was the basis for the Board's determination of "Probable Cause." While the report was not an examination of bridge inspection programs or the safety of bridges in general, it did specifically cite two other bridge accidents, to support the Board's concern about the need for better inspections for both superstructures and substructures, above and below the water.

The Board determined that the probable cause of the collapse was the failure of the New York State Thruway Authority (NYSTA) to maintain adequate riprap around the bridge piers, which led to severe erosion in the soil beneath the spread footings. Contributing to the accident were ambiguous plans and specifications used for construction of the bridge, an inadequate NYSTA bridge inspection program, and inadequate oversight by the New York State Department of Transportation and the Federal Highway Administration (FHWA). Contributing to the severity of the accident was the lack of structural redundancy in the bridge.

The Safety Board is not satisfied that enough is being done in the area of bridge inspections, and I would agree with this assessment. Investigations have uncovered several occasions where insufficient inspections or no inspections at all were either responsible for or contributed to bridge accidents. The Board's investigation of the collapse of the Chickasawbogue Bridge (U.S. 43) near Mobile, Alabama, April 24, 1985, revealed that many States were not performing underwater inspections of their bridges. Further, the underwater inspections performed by some States were not sufficiently thorough.

In the Chickasawbogue Bridge accident, the Board determined that the probable cause was the undetected deterioration of the steel H-piles due to inadequate inspection of the underwater bridge elements by the State of Alabama. Contributing to the accident was the failure of the FHWA to adequately oversee the bridge inspection program of Alabama in accordance with the National Bridge Inspection Standards (NBIS). In addition to recommendations to the States of Alabama, Mississippi, and Tennessee to improve the States' bridge inspection report forms, the Board also recommended that the FHWA:

> Establish criteria for inspecting the underwater elements of bridges which consider the following factors as they relate to bridge design and maintenance:
>
> Complexity of structure and materials used,
>
> Marine environment surrounding the underwater elements of the bridges, and
>
> Frequency and magnitude of loads on the bridges.

In response to this recommendation, the FHWA published a Notice of Proposed Rulemaking (NPRM) to revise the NBIS for underwater inspections. The NPRM proposed that States identify and maintain a master list of bridges with underwater members that cannot be evaluated visually during low tide or by touch. It also proposed that underwater inspections be conducted at least every 5 years. The Board has commented on the FHWA NPRM stating that the proposed regulations do not adequately respond to our recommendation that the FHWA establish specific criteria for comprehensive underwater inspections of bridges.

To further support the statement that not enough is being done in the area of bridge inspections, I cite the Safety Board's investigation of the collapse of the I-95 Highway Bridge over the Mianus River, Greenwich, Connecticut, on June 28, 1983. A 100-foot-long suspended span of the eastbound traffic lanes of the Interstate Route 95 highway bridge collapsed and fell 70 feet into the Mianus River. Two tractor-semitrailers and two automobiles plunged into the void in the bridge and were destroyed by impact from the fall. Three vehicle occupants died and three received serious injuries.

The Safety Board determined that the probable cause was the "undetected lateral displacement of the hangers of the pin and hanger suspension assembly in the southeast corner of the span by corrosion-induced forces due to deficiencies in the State of Connecticut's bridge safety inspection and bridge maintenance program."

As a result of its investigation, the Board made numerous recommendations to the Connecticut Department of Transportation, the FHWA, and the American Association of State Highway and Transportation Officials (AASHTO). All of them dealt with the need to strengthen the bridge maintenance, inspection, and enforcement programs. One recommendation made to the U.S. Department of Transportation stated:

> Direct the DOT Inspector General to review the Federal Highway Administrator's bridge inspection audit program for its sufficiency in establishing State compliance with the National Bridge Inspection Standards.

On January 27, 1988, the DOT Office of the Inspector General informed the Safety Board that it had completed an audit of the FHWA National Bridge Inspection Program (NBIP) for the period from January 1984 through June 1986. The objectives of the audit were to evaluate the adequacy of the States' programs for conducting bridge inspections and the FHWA's controls for managing the NBIP. They found weaknesses in the bridge inspection programs of seven States audited. These States were: New York, New Jersey, Vermont, Florida, South Carolina, Louisiana, and Arkansas. The audit showed that States had not performed underwater inspections, established adequate internal controls, or conducted thorough inspections. While the FHWA has acted to strengthen its controls for managing the NBIP, the Office of the Inspector General found that the FHWA had not adequately (1) monitored essential elements of the States' bridge inspection program, (2) ensured that States provided written responses indicating the corrective action taken on identified deficiencies, and (3) evaluated the FHWA divisions' monitoring of the States' bridge inspection programs. Further, the Office of Inspector General found that these conditions existed because (1) standards and other criteria did not clearly require the State to perform underwater inspections and establish internal controls over bridge inspections, (2) States did not have the proper equipment available for making inspections, (3) States were not required to document corrective actions taken on deficiencies reported by bridge inspectors, (4) States had not allocated sufficient resources to the bridge inspection program, and (5) the FHWA had not established sufficient control for monitoring the States' bridge inspection programs.

In addition, the FHWA conducted a survey in 1987 and determined that at least 43,000 bridges nationwide had not been inspected within the two previous years. Even for those that did receive inspections, it is unclear whether they received comprehensive underwater inspections.

Therefore, based on the Board's prior investigations of bridge accidents and on the DOT Office of Inspector General's findings and recommendations, I believe that the FHWA has lacked aggressiveness and initiative in formulating and implementing a comprehensive bridge inspection program among the States. Moreover, the FHWA has been particularly slow to encourage the States to adopt comprehensive underwater inspection programs and to provide guidance on the proper inspection techniques and procedures that should be employed.

With regard to your statement that the "NTSB did not make any recommendations about whether we are spending enough on bridge rehabilitation and repair" and the question ". . .would you expand the scope of this study to answer the question about funding needs?", I offer the following: As a nonregulatory agency, the Safety Board is not in a position to estimate the level of monies that a regulatory agency should be spending in a specific area. I believe that is a question that should be resolved between the Congress, the Department of Transportation and, in this case, the Federal Highway Administration. The Board's expertise is in conducting an objective and thorough accident investigation and analysis and making recommendations to reduce the chance of a similar occurrence in the future. That does not imply that the Board is not cognizant of the real world nor the practicality of its recommendations. However, the Board does not conduct a cost-benefit analysis in making the safety recommendations, but it also does not make them in a vacuum. The Board believes its recommendations will be accepted if they are based on accurate data, a thorough investigation, and a professional technical analysis of the facts. They are based on a need to improve a situation about which the Board has concerns and to provide a safe transportation system to the traveling public. And, since its sole mission is to improve transportation safety, that is what the Board believes its recommendations will do. But, the decision to accept, reject, or take some other action, as well as the amount of monies to be spent in a particular safety area, must remain with the agency that regulates that mode. Therefore, the funding decisions should remain with the Congress, the DOT and the FHWA.

REAR ADM. CLYDE T. LUSK, JR., TO BE VICE COMMANDANT, U.S. COAST GUARD

THURSDAY, MAY 19, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:01 p.m., in room SR-253, Russell Senate Office Building, Hon. John Breaux presiding.

Staff members assigned to this hearing: Becky Kojm, professional staff member and Macky Ayers, minority professional staff member

OPENING STATEMENT BY SENATOR BREAUX

Senator BREAUX. The Committee will please come to order.

This afternoon, our Commerce Committee will meet to consider the nomination of Admiral Clyde Lusk, Jr., to be Vice Commandant of the United States Coast Guard.

The President had submitted Admiral Lusk's name to the Senate on March 23 of this year.

These, of course, are especially challenging times for our Coast Guard. We in the Congress, along with the American people, have called on the service to be on the front line of our effort to stop the flow of illegal drugs into our country. This is a tremendous challenge to the Coast Guard, one that it must assume while continuing to fulfill its other vital missions, such as safety of life at sea, fisheries enforcement, and military readiness.

Unfortunately, our severe national budget crisis has prevented us from providing all of the resources that are necessary for the Coast Guard to carry out its many duties. For this reason, it is increasingly important that we provide strong and qualified leadership for the service.

Having known Admiral Lusk for some time, I certainly believe that he is such a leader. Admiral Lusk has been with the Coast Guard for 34 years. He graduated from its Academy in 1954. His association with the service started even before this. His father was also a career officer in the U.S. Coast Guard.

Currently, Admiral Lusk serves as Chief of Staff for the Coast Guard. He has served in many capacities in his career, including Commander of the Eighth Coast Guard District, which, of course, is headquartered in my home State of Louisiana.

We welcome you here this afternoon, Admiral.

I could just add, additionally, that we have had long years of experience in my previous assignments and your previous assignments dealing with issues that are very important to our Nation, particularly to the Coast Guard, especially when you were down in the Eighth District and in the Gulf of Mexico.

So, we welcome you here, and look forward, if you have any comments that you would like to make at this time, to receiving them.

[The statement and biographical sketch follow:]

OPENING STATEMENT BY SENATOR PRESSLER

Thank you, Mr. Chairman, for scheduling this hearing today on the nomination of Rear Admiral Clyde T. Lusk, Jr. to be the Vice Commandant of the U.S. Coast Guard with the grade of Vice Admiral.

I have read Rear Admiral Lusk's biographical information quite closely and am impressed with his record of service with the Coast Guard that began in 1950 at the U.S. Coast Guard Academy. In fact, Rear Admiral Lusk is following in the footsteps of his father who was also a distinguished member of the U.S. Coast Guard.

The Coast Guard does not have a lot of work in my state of South Dakota. However, I am interested in the continuing efforts of the Coast Guard particularly with maritime law enforcement (particularly drug interdiction), and search and rescue. I am pleased to see qualified individuals such as Rear Admiral Lusk moving up through the ranks of the Coast Guard.

Rear Admiral Lusk, I congratulate you on this nomination and wish you the best in this new position of responsibility.

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN

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United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Lusk (Last) Clyde (First) Thomas Jr. (Other)

Address: 8203 Snug Hill Lane (Current residence)
Potomac, Maryland 20854

2100 Second Street, SW (Business)
Washington, DC 20593-0001

2. Position to which nominated: Vice Commandant, U.S. Coast Guard
Date of nomination:

3. Date of birth: December (month) 20 (day) 1932 (year)
Place of birth: Medford, MA

4. Marital status: Married
Full name of Spouse: Beverly Joan Tasko Lusk

5. Names and ages of children:

Joan Elaine Cashion	(31)	Mark Thomas Lusk	(27)
Gail Marie Banwell	(30)	Lori Ann Graalman	(26)
Lois E. Thigpen	(28)	John E. Lusk	(24)

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Various elementary/junior high schools between 1938-1950 (Washington, Massachusetts, Connecticut, Florida, California) as my father was a member of the U.S. Coast Guard and was transferred many times.			
Milford High School, Milford, NH		HS Diploma	1950
Coast Guard Academy	1950 - 1954	BS	May 1954
Coast Guard Industry Towing	1965	N/A	
Industrial College of the Armed Forces	1974 - 1975	N/A	

7. **Employment record:** List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
May 1986	Present	Coast Guard Headquarters	Washington, DC	Chief of Staff
Jun 85	May 86	Eighth District	New Orleans, LA	District Commander
Jul 81	Jun 85	Coast Guard Headquarters	Washington, DC	Chief, Office of Merchant Marine Safety
Jun 80	Jul 81	Coast Guard Headquarters	Washington, DC	Deputy Chief, Office of Merchant Marine Safety
Sep 78	Jun 80	Eighth District	New Orleans, LA	Chief, Operations Division
Jul 75	Sep 78	Marine Inspection Office	New Orleans, LA	Commanding Officer
Jul 74	Jun 75	Industrial College of Armed Forces	Washington, DC	Student

8. **Government experience** List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

My Coast Guard assignments are Federal and have frequently brought me into close association with State and local governments.

9. **Political affiliations activities:** List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Several small contributions given to the Republican Party. No offices held; no services rendered.

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

U. S. Coast Guard Academy Alumni Association

National Rifle Association

International Metallic Silhouette Handgun Association

Industrial College of the Armed Forces Alumni Association

Andrews Air Force Base Golf Association

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Legion of Merit (2); Meritorious Service Medal (2); Commendation Medal; Coast Guard Achievement Medal, Secretary's Award for Achievement (Silver Medal), Meritorious Unit Commendation; Commandant's Letter of Commendation (3)

Graduated "with distinction" from the Industrial College of the Armed Forces.

STATEMENT OF REAR ADM. CLYDE T. LUSK, JR.

Admiral **Lusk**. Thank you, Mr. Chairman.

I have a very short statement, if I might present it.

Senator **Breaux**. Certainly.

Admiral **Lusk**. As you mentioned, Mr. Chairman, my association with the Coast Guard commenced at birth. My father spent his career in our service, first as an enlisted man, then as a warrant officer, and, finally, as a commissioned officer.

His frequent transfers gave me my first insights into the life of a Coastguardsman and into the spirit of our service, as well as of the dimensions of our country and its regional variations.

My childhood memories are of Coast Guard vessels, the Coast Guard family, and Coast Guard day picnics in many seacoast cities, including Boston, Gloucester, Norfolk, Provincetown, Miami, Seattle, Long Beach, Port Angeles, and New London.

Since my 1954 graduation from the Coast Guard Academy, I have been stationed in quite a few of those same cities, as well as cities in different geographic areas than those my father had to serve in, including Kodiak, Alaska, St. Louis, Missouri, New Orleans, and Washington. I am now serving my fourth tour in the Washington, D.C. area, sir.

I feel very comfortable with my understanding of the Coast Guard and the role that it plays in our government; of the importance of its contributions to preventative and reactive marine safety, to law enforcement and defense readiness; and of its impact on those it regulates or otherwise serves.

I am acutely aware of the need for maximum efficiency in government, Mr. Chairman, and I suggest that I have proven my ability to contribute toward that goal, particularly during my last several assignments.

The Coast Guard is a proud, somewhat complex, and important member of our Nation's Armed Forces. I consider it a singular honor to have been nominated to be its Vice Commandant.

Thank you, sir.

Senator **Breaux**. Thank you very much, Admiral. I appreciate your general comments.

With regard to a little bit more about the role of the Vice Commandant, the Congress is giving the Coast Guard, it seems to me, more and more assignments. More and more legislation that we consider gives you more authority. We are really leaning on the service, I think, very hard with regard to trying to get you more involved in drug interdiction. And yet, we have had some rather severe budget cuts.

This is a real challenge. We are asking you to do a lot more with a lot less.

What is your perspective on the budget this year, as to how we are going to handle all these additional requests for activity on behalf of the Coast Guard with what I see is, what, a $100 million budget shortfall experienced by the Coast Guard?

Admiral **Lusk**. Yes, sir.

As Chief of Staff, my job is to be able to find a way to accommodate whatever budget we have, and to try to put as good a face on it as we can presenting the Commandant as many options for how he might be able to maneuver with whatever budget he has.

I feel confident that we can pull it off.

Yet, on the other hand, Mr. Chairman, there is no question but what our service and the services that we provide to the public are being damaged by the money that we so far have available in 1988.

Now, I will admit that we have a reprogramming of $60 million that, with luck, we might be getting. That will certainly mitigate a lot of the impact.

But, in 1988, as it now stands, we have cut some $42 million from our operating expenses by shutting down many, many units and letting a considerable number of our people be released.

We have squeezed down many of our spare parts bins, if you will, sir, and we have been forced to cut down the amount of funds that are available for many of our vessels, thus, cutting back very severely into some of our drug interdiction efforts.

So we are hurting this year.

Senator **Breaux**. How many of the stations would be cut, out of the proposed budget cuts? What do we have, 218 stations?

Admiral **Lusk**. I think there are some 40-odd stations that are being cut, sir. These are very widely spread geographically, and these were only for the first $42 million of the $103 million problem that we have.

We have another cut list that we hope we don't have to implement, sir. The other cut list would be what we would have to do if we don't get the—I shouldn't call it a "supplemental" because it is really a "reprogramming"—that is now before the Congress.

Senator **Breaux**. The President has asked for reprogramming of, what, I believe about $60 million?

Admiral **Lusk**. Yes, sir.

Senator **Breaux**. What would that enable you to not have to do, from a cut standpoint?

Admiral Lusk. It would not allow us to restore any of the units that we have now cut. But it would allow us to avoid the continuation of the lack of funding, if you will, for our vessels that are tied up in the drug interdiction mission. We would be able to fully fund them.

We would be able to buy spare parts and the like. So, as we started into fiscal year 1989, we'd at least have spare parts and vessels that would operate and that hadn't had all of their preventative maintenance postponed.

Senator Breaux. Let me ask you a question from a policy standpoint.

We have read about the zero tolerance program of the Coast Guard and the publicity with regard to the seizures of a couple of yachts. I note an article by Pete Yost—I guess that is no kin to Paul Yost, the Commandant. Give me some discussion on the zero tolerance proposal.

I am a little concerned about it. Everybody in Congress is falling over each other to try to be tough on drugs, and I think there is a real need to be very, very tough. But I am a little concerned with a vessel that I saw that was seized with one-tenth of an ounce of marijuana on it, and that was found in a trash can.

The owners of that vessel were nowhere in the area. They were maybe in New York or thousands of miles away, while the crew was transporting their vessel from one point to the next to prepare for a fishing trip, or for anything.

In that type of situation, where a vessel is boarded with the forfeiture of the yacht, I mean, you are hurting a guy who may have had no connection to it at all.

Now, I know he has a responsibility for his craft. But some people have said that that type of seizure, that that type of policy, is hurting yacht owners around the country who really are not directly, or even indirectly or remotely, involved in something like that.

Do you have any comments on that?

Admiral Lusk. Yes, sir.

First of all, the zero tolerance thing is a very contentious matter. It is a very new policy. We have only had it in the Coast Guard, as a matter of fact, it has only been in the Federal Government, to my knowledge, for just a matter of a few weeks.

Senator Breaux. Is that a presidential directive, or a Coast Guard directive? Where did it come from?

Admiral Lusk. I don't believe it came from the President, but I believe it was an interpretation—not from the President himself, now—but it was an interpretation that was spread throughout all the modes. Customs is doing it; we are doing it; they are doing it by the Border Patrol.

So, it was an "omni mode" type of policy that I don't believe was built on any new statute, but was, rather, a different interpretation of existing statutes.

Now, as far as the Coast Guard was concerned, of course it has caused an awful lot of press. This same policy being implemented when you stop a car going across a border or something has been given some press, but not the really dramatic press that the seizure of a few vessels on the high seas by the Coast Guard has.

Senator Breaux. But, generally, the automobiles that have been seized with a zero tolerance, generally the owner of the car is operating the car.

I am really concerned about the legitimate yacht owner who is not on his boat or hasn't been on it for weeks or months, and his crew may be taking it in for repairs, or taking it to prepare to go fishing, or what have you, and all of a sudden the guy reads that his boat is gone and has been forfeited.

Admiral Lusk. I share your concern, and so does the Commandant.

As a matter of fact, I'm not telling secrets out of school, but they are meeting on this today, and possibly right now, to discuss this—not only the Coast Guard and the Department of Transportation, but all of the organizations that are involved.

Senator Breaux. Well, maybe we ought to hurry up with this hearing so that you can rush over to the meeting and share your thoughts.

The Senator from California, do you have any comments or questions?

Senator Wilson.

Senator Wilson. Thank you, Mr. Chairman.

I may be covering some of the same ground that the Chairman has, Admiral, but of the many important things which the Coast Guard is engaged in, one, obviously, that is one of its more recent, but serious, responsibilities is that having to do with the interdiction of drugs.

We did a very unwise thing last year—we, the Congress, and I will give credit where it is due, to the House—when we foolishly, and in conference we apparently agreed to it, cut the Coast Guard budget about $117 million in order to further subsidize AMTRAK, which, it seems to me, is getting priorities badly confused.

The correction that is in sight would seek not only to restore that funding, but also to add to it.

I will be very much interested in whether or not that permits you to be as aggressive as, in fact, it is obvious the Congress wants you to be. I know that 90 percent of the arrests made by the Coast Guard were made in the course of routine law enforcement patrols.

I was greatly angered by, as I say, not at the Coast Guard but by congressional stupidity—to call it what it is—when it resulted in the grounding of aircraft and leaving vessels tied up at the wharf.

In the amendment that we have just passed overwhelmingly to the Defense Authorization Bill, there will be considerable new support in terms of border interdiction, or interdiction of the supply of drugs beyond the border, provided by Air Force and Navy assets.

This question is probably premature. Have you had an opportunity to anticipate what role the Coast Guard will have now as a result of the increased effort that is going to be made, and do you foresee that the existing budget will be adequate to that, or do you see that it is going to require some additional funding and support?

Admiral Lusk. Well, of course, the budget problem comes at us in about three different forms. The $60 million that I mentioned to the Chairman earlier would, of course, allow us to restore the existing level of operations that we had before we got the budget curtailment for the rest of 1988.

The budget that we have requested for 1989 would be adequate to give us a very modest increase over what we had hoped to do in 1988, but, certainly, would not allow us to be able to come up with the level of effort that I believe Congress wants as they discuss the possible amendments to the Defense Appropriations Act.

As I read some of the Congressional concerns, as they talk about the need for greatly increased surveillance, as they talk about sealing borders and depending on which variant that you look at, we are talking about very, very great resources.

For instance, sir, we have but two E-2C aircraft, and we have several aerostats, shore-based, and I believe one or two operating off of ships now.

Senator WILSON. Aerostats operating off ships?

Admiral LUSK. Yes, sir. We have two operating off ships, and we have several that are at a little bit higher elevation, operating from fixed platforms.

The level of effort that I believe Congress envisions—and as they talk about using DOD resources—would require a tremendous number of just surveillance assets, overwhelmingly more than we have now.

So, as I see this, I don't see too clearly what role the Coast Guard would play; but I see a level of effort that would be much greater, probably a very great increase in the participation by DOD, possibly with many of their units operating either under DOD aegis or possibly with the Coast Guard playing some sort of coordinating role.

So I don't know how much more money the Coast Guard would need. But I think the level of effort itself, including other armed forces input, would have to be much greater than it has been in the past. That, of course, would be more money for anti-drug use.

Senator WILSON. Could you tell me what the response has been to the provision in the 1987 Defense Authorization Bill, which required that up to 500 Coastguardsmen be made available for the purpose of manning naval vessels to engage in drug interdiction?

Admiral LUSK. Yes, sir.

We have come up with a concept that we call LEDETS, for Law Enforcement Detachments. These are small groups of Coast Guardsmen that are put aboard Navy vessels—an officer, at least one officer, in the group. These will be put aboard Navy vessels that are going to be transiting in areas where we believe there is narco traffic.

The concept has proven to be very effective.

When we first started it, there were some hangups in that, for some reason, the Navy wasn't allowed to board vessels of all nationalities. But those hangups have been worked out.

Now we have many, many Navy vessels—I don't have at the tips of my fingers the number of transits during the past year—but we have hundreds of Navy transits, and in some cases dedicated vessels that are operating with our people under our command and control that have Coast Guard LEDET support.

Now, their seizures have been certainly well executed and leave us no problems. The amplification that they gave to our ability is absolutely incredible.

We have a briefing a couple of times a week down in our office, and if you could just see what's going on down in the Caribbean, you would see the involvement of the Navy vessels, mixing in with ours, and you'd understand just how important that has been to us. Without the LEDETS, we simply could not have made it work.

Senator WILSON. Is it possible to get a briefing on that?

Admiral LUSK. Of course, sir.

Senator WILSON. I think it would be very useful because I have a general concept as to how we intended that it would work when, in fact, we put that requirement into the 1987 Authorization Act. But I am gratified by your response.

Admiral LUSK. There have been some funny stories, sir.

I remember the first time we had a guided missile cruiser. We all heard that there was a guided missile cruiser with a small LEDET aboard, that had stopped the rather small mother ship—I shouldn't say "stopped" because the vessel wouldn't stop; it kept going.

We subsequently got some tapes of this. But we were all wondering exactly what they were going to fire across the bow. We were wondering whether the cost to the vessel and its cargo would in any way equate to the expense of what might be fired across the bow.

Senator WILSON. I can answer that, I think, though not knowing directly. Of course, I should find out what the street value of the cargo was.

Actually, that touches on the next question that I wanted to ask you.

You said that the integration of the Navy ships has greatly amplified the effectiveness of the Coast Guard in its law enforcement role, and that is precisely what we had hoped.

What are the dedicated vessels? You mentioned that some are in transit and some are dedicated.

What kinds of vessels have been dedicated?

Admiral LUSK. It depends on the way the exercises, I shouldn't say "exercises," the way the operations are being conducted and the number of ships that were involved. Sometimes they have been fleet tankers, for instance, that were provided to service not only the Navy ships but the Coast Guard ships, too.

The Navy ships are usually frigates. But there have been light cruisers. We had a couple of heavy cruisers. I don't know of any aircraft carriers, but we might have had them.

Basically, if the Navy has a squadron that is going somewhere, we have certainly gotten super support from Admiral Trost and his company.

Senator WILSON. Now those are in transit?

Admiral LUSK. Not all of them. Sometimes they would be in transit, and sometimes they would be in transit, but they would have a week or two before they had to make another commitment.

And so, we would have that worked into the schedule. Perhaps they were going to the Mediterranean or something, and we'd get them to stay with us for a while. So it really has worked out that we have had far more than vessels in transit. We have had dedicated vessels.

Senator WILSON. Where have these operations taken place? All through the Caribbean?

Admiral LUSK. They have taken place all the way down off the coast of Colombia, through the Caribbean and the choke points, through the Bahamas—everywhere down there—everywhere we have had any activity.

Now, I must admit that it is going to get harder for them. The Navy has had to curtail some of the units they have for budgetary reasons, too, and we are concerned that, as they have to meet some of their other commitments, that might make it a little harder for us.

But they have been very supportive.

I would be glad to arrange a briefing for you, sir.

Senator WILSON. Is there an obvious need from your point of view?

Is there something in the way of additional authority that is required in order to further amplify the effectiveness?

Admiral LUSK. No. We don't need any more authority. We are quite pleased with the way it is operating now.

Senator WILSON. Thank you very much, Admiral.

Admiral LUSK. Thank you, sir.

Senator BREAUX. Let me ask, Admiral, a question about the non-emergency assistance program of the Coast Guard vis-a-vis the use of Coast Guard auxiliarists participating in non-emergency assistance.

Tell me a little bit about the status of that.

Admiral LUSK. Okay, sir.

We have always had, ever since my father was on ships that were towing vessels, a policy that we tried to avoid interfering with the private sector. I can remember during some of my days at sea when we would turn tows over to sometimes almost too small to believe a commercial towboat that certainly had the capability but was just designed for towing.

I can remember that being our policy—noninterference with the private sector.

Since back after the war we have had the Coast Guard Auxiliary, the Coast Guard Auxiliary has grown to be an organization just about the size of ours. It has roughly 40,000 people. They are all volunteers.

The organization costs the taxpayer very little. We pay for any claims they have for damage while they are operating under our orders. We pay for their fuel. We pay for very little else. We pay for damage to their vessels, if it is justified.

Now, we allowed, for many years, the Coast Guard Auxiliary vessels to be used almost like we were using our vessels.

In 1983, I believe, we came up with something of a constraint to the Auxiliary, where we took a new policy of giving a lot more priority than we had before to the private sector, at the expense of the Coast Guard Auxiliary's participation, making their role almost exactly like ours, whereas before, they could render services in competition with the private sector more than we could, sir.

We basically constrained them to operate just about the way we do in noncompetition.

Now, the difficulty occurred that since 1983, we have had many people who have had problems. We have had, of course, a growth in the private sector non-emergent towing business. We have a lot of yachtsmen, a lot of pleasure boaters of different types, who have complained for a number of reasons, either that the costs were too high or that they were really frightened with their families out there, even though the Coast Guard thought of the case as being non-emergent in nature. To them it was darn emergent in nature, and their wives and children were out there in the ocean, being exposed, and they were afraid of the ocean.

So we got those kind of complaints. And also from the Auxiliarists we got many complaints.

Now, the typical Auxiliarist gets involved in about three kinds of activities. He is involved in training, and that is fun to a lot of them, but it is sort of boring to others. By "training," I mean training private boaters in gratuitous courses taught in high schools and municipal auditoriums.

The second thing they are involved in is boarding and examinations. These are typically at boat launches. It is very important to our program, as is education. It's about the only education that we have and it's the only boarding program that we have.

The Auxiliarist do that to be good sports and because we give them quotas and the like. But most of them don't really like that.

What they really like is to do patrols and rescues. They own their own boats, and their way of really being paid back is the satisfaction of helping people.

So, during this period of around 1983, the last five years, we have had a lot of Auxiliarists who have indicated discouragement that they are still expected to do the training and they are still expected to do all of the examinations, but they are not allowed to render help because, when a call comes in, we put out a broadcast and we try to get someone from a commercial, non-emergent SAR, to go out and handle the call.

Now, you see a lot of the pleasure boaters take umbrage at this because they say gee, those people are really good samaritans. They want to help us for free, and instead of getting their help free, and right now, we have to wait for someone who might take a long time to get there who is going to charge us and—according to them; I am not suggesting this now—gouge them with their prices.

Well, somewhere along the way, fast that we are, after four years of getting thousands of letters, we figured out there was a problem. So we had some public hearings.

They weren't really hearings; they were public meetings. I believe we had 14 of them during February and March of this year.

We had several thousand people in attendance. Thousands of letters came in.

Of course, the people who were in attendance included the people from the non-emergent SAR businesses, and much of the correspondence came from them, too, advocating their position, their position essentially being that they want a bigger piece of the action. The Auxiliarists' position was that they want a piece of the action. The pleasure boaters' position was that they would kind of like to get rescued quickly, and, if possible, if there were someone willing to do it for nothing, for free.

Our position was that we are not trying to interfere with private industry. It is a classic case of a confrontation between privatization, which is very important in some quarters, and voluntarism, which is very important in the same quarters. We are sort of in the middle.

Our real interest is only the interest of the poor guy who is out there trying to get rescued, who is terrified of where he is, with his wife and his kids, and who doesn't recognize that particular day as our operations officer might, as being a nice, safe day, where he doesn't have a problem. He is just scared out there.

Senator **BREAUX**. You have outlined the situation very, very accurately and very well. But what is the policy going to be now in light of all of this?

Admiral **LUSK**. You know, I told you once before today that my leaders were meeting, and I'm going to use the same words today, and you're going to think I'm lying. But the truth is the two topics of this non-emergent SAR and the zero tolerance thing are really things that are right on Admiral Yost's plate today. He is trying to have meetings with the department on both those issues today.

Senator **BREAUX**. I think it would be helpful, because so many of us are really interested in both those subjects, to give us a letter to the Committee, perhaps from Admiral Yost, when the decision is made as to what the policy is going to be on both of those, because we get an awful lot of inquiries ourselves, so that we will be able to answer both those questions as soon as a decision is made.

Admiral **LUSK**. Certainly, sir.

[The following information was subsequently received for the record:]

The requested letter will be forwarded to the Committee separately, see p. 97.

Senator **BREAUX**. Senator Stevens.

Senator **STEVENS**. Thank you, Mr. Chairman.

Admiral, we are happy to see you here.

I know that you have served in my State and we are delighted to see you get this promotion.

I have just a couple of questions.

I have been a little disturbed about the Coast Guard, in its eagerness to serve, seeking to expand its sphere of operations at the same time as it is forced to contract its traditional services in the areas of search and rescue, fisheries, law enforcement, and just general safety and navigation concepts.

Does that bother you, that the Coast Guard decided it wanted to go into the Persian Gulf. It also wants even more authority in terms of the war on drugs at a time when it has to restrict those other traditional areas of operation?

Admiral **LUSK**. I spoke at the Academy a number of months ago, and I tried to give the cadets a perspective that there is always a challenge to managing during a period of expansion and there is a different challenge to managing during a period of contraction, when you are talking about expanding the budget or contracting the budget.

Right now, the Coast Guard, without any question in my mind, is trying to expand its areas of responsibility during a period of budgetary contraction. So you are quite correct.

The Commandant, Admiral Yost, is a very, very aggressive officer, who came into the job with the feeling and still feels that we could do a lot more with what we had. One of the big, I won't say "games in town", but one of the big chores that we have been facing is trying to figure out a way of getting the ability from within to do more. That accounts for why we had the whole field realignment, which caused you a certain amount of distress up in your area, sir, as we consolidated all of our supply systems and support systems, why we came up with a whole new approach to our headquarters organization that was able to save more billets.

The problem is that we got increased pressure being put on us for drugs. For instance, in last year's act, we were told, in our authorization act, to spend $429 million on drug interdiction.

Well, when we simultaneously get less money and are told by the Congress to spend a certain floor on drug interdiction, then the challenge is how to continue the missions that we traditionally have done, and we have been doing the very best we can to do those from within, sir.

But it has been frustrating to us. But it is a management challenge. I am not suggesting that we are trying to back away from it.

Senator STEVENS. I understand that. But I don't remember, either on this Committee or in the Appropriations Committee, that the Coast Guard has ever said we can't do what you have asked us to do unless you put money on the line along with it. We participated in delivering to you $1.3 billion more new equipment and that was really basically at the request of the Coast Guard.

Now, we find that, in order to operate that new equipment in other waters, the fishing industry, in particular, is being reduced in terms of its Coast Guard support; that navigation aids are being reduced.

As I said, I was appalled to find out that the Coast Guard has actively sought the jurisdictional role of the shallow draft vessels for the Persian Gulf. And, at the same time, I find that every time there is a reduction in money from what you have sought, not from what you had the year before, but from what you sought for the next year, the announcement is made in Alaska that if we don't get this money, we're going to reduce Alaska operations by 65 percent. That was the word that was out just a month ago.

I don't know how you can reduce 65 percent in Alaska and at the same time expand in Florida and seek a total new role in the Persian Gulf.

Admiral LUSK. Senator, there is no one who has greater respect than you do in the Coast Guard, and there is no one to whom we owe more than to you, in getting equipment and the like. I say that as sincerely as I know how to.

We are very distressed right now because we are cutting back on such things as fisheries patrols, and we know that, as you get up into certain of the areas around the Bering Sea, that is causing a lot of distress.

That problem is simply because of the budgetary problem that we find ourselves in right now.

We hope that will be totally alleviated with the $60 million worth of reprogramming that I expect Congress will be looking at in the very near future and that it is working on now.

Then we will be able to restore all of that.

With regard to the Persian Gulf, from my perspective, there is no question but what our people are eager. Our people do consider themselves, quite properly, to be one of the armed forces. There is certainly a lot of interest among the 40,000 people out there that they, too, play a role in the Persian Gulf situation, just as they have in every other conflict that we have had for the last hundred-some years.

The fact is, though, that the patrol boats that we have, the 110's that we have, we don't have enough of them. We are building more, and we need them for drug interdiction and other purposes.

But the fact is that those are the very, very best patrol boats probably in the world today, and they are so much better than anything that the Navy has for a similar purpose, that we were asked to give briefings to those on the Joint Chiefs of Staff and in the Pentagon. It is very obvious that we very proudly told of the capabilities of the vessels that we have.

We are a member of the armed forces and we are interested in military readiness. Some of those vessels were bought out of Coastal Defense Augmentation account money. It is not so much that we were saying let's sacrifice our existing missions as it was saying that we will try to do more than we are now with what we have.

We don't want to sacrifice our existing missions, sir.

Senator STEVENS. I hope that there is a little more consultation by the Coast Guard and those of us who are faced with the responsibility of trying to maintain the steady pace of support as you evolve new missions for the Coast Guard.

I remember the 110's. As a matter of fact, we built 12 of them for the Navy when they didn't want them at all, and doubled the amount, as I recall it, that you were going to get, and at the time both of you wanted a different boat.

The real problem is I don't think we are consulted enough in terms of advance planning so that we have some idea what is going to happen.

But it does not do me much good to be in the position of having just returned from the Persian Gulf and supporting what our government is doing over there and then have people call in from Dutch Harbor and say have you heard what they're going to do now, they're going to send some of these boats over to the Persian Gulf. That wasn't the case, but all they heard was that you're going to the Persian Gulf at the same time that you are reducing 60 percent, according to the Juneau office in Alaska.

I don't want to belabor this. I just think it is hard for any of us to maintain a continuity with the echelons of the Executive Branch that we have been assigned responsibility here in our process unless we have better consultation about future planning.

I urge you to do that.

As I said, you have a great reputation up my way, and we are delighted to see what you are going to be doing now. And Paul Yost is and has been a great Commandant. He needs help, there is no question about that, in this period.

We, some of us, would like to be a part of that support base. But we can't do it if we have to have calls from Dutch Harbor or read in the paper about a Persian Gulf operation that none of us knew anything about.

Admiral LUSK. I fully understand, sir, and my apologies.

We will try to do better.

Senator STEVENS. Thank you.

Senator BREAUX. I want to thank the Senator from Alaska. He made some very good points.

I know, Admiral, that this is a confirmation hearing and not to discuss the general policies of the Coast Guard, but since we have you here, we are going to take advantage of your presence.

I want to ask you this. I noticed in the "New York Times" an article and I was particularly pleased that the President saw fit to address the Coast Guard graduates. That was very fitting. But the headline was "Coast Guard Fighting Off Yacht Club Image." I am sure that made a lot of you folks real happy, to see that headline.

Suffice it to say there are an awful lot of us that know it is much more than a group of folks running around in Topsiders. It is a dedicated service, part of the military, and with a military mission as well as fisheries, drug interdiction, and everything else.

I want to say that we don't think they have that yacht club image at all.

Let me ask you something from a policy standpoint.

There is a pending proposal—I mentioned it to your office—by a group of Japanese to purchase a current American-owned towing company, a barge company. Of course, under U.S. laws, the Jones Act, you cannot have a foreign ownership of a barge company unless it meets the very narrow exemptions under the law which, as I understand it, would be that if a foreign owner were in the mining or manufacturing business and their use of those barges or vessels would be used to transport their own product.

My question to you is this. A concern has been raised that the Coast Guard plans to move forward with approval of this transaction and issue a certificate of compliance and then look to see whether this situation meets the requirements of this exemption. My concern is that this is putting the cart before the horse in the sense that we should, as we do with Americans who come in for permits or requests for certificates or what have you from any branch of the government, conduct an investigation to see if they meet the requirements and then grant whatever they seek, or deny it.

Can you enlighten me on this at all?

Admiral LUSK. I can tell you all I know about it, sir.

As I understood the issue—and it is probably more complex than I realized—but as I understood the issue, it was a question of documentation of a rather considerable number of barges. The typical documenting officer would be accepting almost at face value the attestations that were made in the affidavits that were given.

Now, in this case, as I understand it, there is another barge company that has indicated in two areas that they have trepidation that it might not be a legal operation, and that our people—and I believe this is a very, very recently determined thing; I just heard about this yesterday—that they had talked with our lawyers and the like, and they said, as a generalization, that we would accept—we wouldn't even know about these things—and we would issue the documents.

Now we have gotten the notification that someone has challenged; but it will probably take a bit of time to investigate it.

So, I believe what their intent is is to issue the documents and, simultaneous with issuing the documents, to indicate to the company to whom the documents are issued that there have, indeed, been two challenges, and that those two challenges are going to have to be looked into; and that if it is determined that the challenges are correct, that the documents will probably be revoked.

That's about all I know.

Senator BREAUX. I am concerned about that procedure. I don't know the merits of the case, because I don't know of other than what I have been informed of in general. But my concern is with the procedure, which would allow the issuance of a certificate of compliance prior to us knowing the facts.

This really is putting the cart before the horse in the sense that what we are saying is if somebody comes in, a foreign group seeking to buy an American company, saying we want to buy it, that we automatically issue that compliance with all the narrow rules, and then we conduct the investigation.

I mean, it seems like it would make more sense to me to conduct an investigation to see if they factually meet the requirements of the law and if they do, to issue the compliance order. If they do not, then deny it.

But it makes to me, at least from what I know about it, no sense to issue the compliance and then conduct the investigation because then you are put into a situation, I would offer, of having to revoke that issue of compliance. And then the Coast Guard opens itself up, I would think, for potential litigation for any actions that were taken pursuant to that initial issuance of approval.

It seems like it does not make any sense if that is the factual situation.

I really would appreciate it if perhaps your office could look into that. Perhaps that has been the pattern, the way we have handled these things, and I think that we ought perhaps to have a different procedure in looking at the actual allegations to determine whether they are indeed accurate or not.

Admiral LUSK. May I look into it and respond to you by letter, sir?

Senator BREAUX. I think this is an ASAP type of situation, because I think that a decision is being made even as perhaps we speak.

So I would really like to have someone be able to respond to that and let you get to the zero tolerance meeting, and let you get to the Coast Guard Auxiliary rescue of non-emergency vessels meeting, and to this situation as quickly as we can.

Admiral, I thank you for coming. I think obviously from the questions that you had from the members of the committee, you can see that we have a great deal of respect for your ability and already treat you as being in your new position.

I think you should have no problems and I appreciate your being here with us today.

Admiral LUSK. Thank you, Mr. Chairman. I enjoyed being here. As you can see, I have brought all my friends.

Senator BREAUX. You just need a few up here and you will be all right.

Admiral, thank you very much.

That will conclude our hearing.

[Whereupon, at 2:45 p.m., the committee adjourned.]

[The following information was subsequently received for the record:]

The Coast Guard followed established administrative practice in processing Consolidated's application under section 883-1 of Title 46 U.S.C.App. Sworn oaths establishing eligibility were required. In addition, the Coast Guard conducted an investigation into eligibility prior to issuing Certificates of Compliance. We did so by requiring evidence in addition to that prescribed by the statute and regulations and analyzing that evidence in light of the challenges issued. The applicant, Consolidated, is not a foreign corporation, but a U.S. corporation whose stock is owned by Japanese companies.

In April 1988, Ingram Barge Company advised the Coast Guard of its belief that Consolidated Grain and Barge Company was contemplating a sale of all of its stock to several Japanese companies. Coast Guard vessel documentation officials were already aware of the proposed sale of stock and were monitoring the situation. The Coast Guard had an interest because Consolidated was a citizen, pursuant to 46 U.S.C.App. 802, eligible to document the vessels it owned for operation in the coastwise trade by virtue of the fact that greater than 75% of its stock was owned by U.S. citizens. In fact, Consolidated had approximately 100 vessels documented with coastwise licenses. If Consolidated's citizen-owned stock dropped below 75%, it would no longer have been eligible to document vessels with coastwise licenses. It would, however, have remained a citizen for the purposes of vessel documentation and could have continued to document vessels with registry endorsements.

On May 2, 1988 Consolidated met with documentation officials to formally advise the Coast Guard that Consolidated had agreed to sell 100% of its stock to several Japanese companies. Consolidated acknowledged that subsequent to the sale of stock they would no longer be eligible to document vessels they would own with full coastwise licenses. They additionally expressed their intent to make application under the so-called "Bowaters Amendment" (46 U.S.C.App. 883-1) which would allow documentation and operation in a limited form of coastwise trade.

The Bowaters Amendment grants citizenship status for the purposes of the shipping and documentation laws to corporations established under the laws of the United States or a State thereof which meet five eligibility requirements. Those requirements are as follow:

A majority of the officers and directors are citizens of the U.S.;

Not less than 90% of the employees are residents of the U.S.;

The corporation is engaged primarily in a manufacturing or mineral industry in the U.S.;

The aggregate book value of the vessels owned by the corporation does not exceed 10% of the aggregate book value of the assets of the corporation; and

The corporation purchases or produces in the U.S. not less than 75% of the raw materials used or sold in its operations.

The statute states that a corporation "shall be deemed a citizen" if the eligibility requirements are established by a "certificate under oath" ("affidavit"). The Coast Guard has implemented standard procedures for processing applications under the Bowaters Amendment.

The regulations in 46 CFR Part 68 set out the form and content of the prescribed affidavit. Among other things, the affiant must swear that he is legally authorized to make the oath on behalf of the corporation. He also must recite each of the eligibility requirements and swear that the corporation meets each. The affidavit must also attach and incorporate a list of all officers and directors. Upon presentation of the prescribed affidavit, the Coast Guard reviews the contents for compliance with the statute and regulation. If from either the face of the affidavit or through extrinsic evidence it appears that there is a question of the affiant's veracity, the Coast Guard conducts further, appropriate inquiry into the corporation's eligibility. Since the Bowaters application is made in the form of a sworn statement, the Coast Guard requires more than mere allegations of ineligibility to overcome the oath's presumption of proof. If, after conducting an inquiry into any allegations, the prima facia case for eligibility is not overcome by the existence of convincing evidence, the Coast Guard issues a Certificate of Compliance. If further investigation is deemed to be necessary, is then conducted after issuance.

Consolidated presented the Coast Guard with advance drafts of affidavits and officer and director lists contemplating their structure and operations at the time of the sale of stock. Although not prescribed by either the statute or the regulation, the Coast Guard also required that Consolidated present data in support of each of the Bowaters eligibility criteria. On May 19, 1988 the sale of stock closed and Consolidated submitted affidavits and officer and director lists identical to the previously provided drafts. As of that time, Ingram had submitted to the Coast Guard allegations of ineligibility and evidence in the nature of news articles, an affidavit of an Ingram official, and descriptions of Consolidated's past operations. The Coast Guard reviewed all submitted material pursuant to established practice.

The only allegations in opposition which went to the merits of the eligibility criteria were that Consolidated owned in excess of 600 barges and that Consolidated was not primarily engaged in a manufacturing industry. If Consolidated owned over 600 barges, it was possible their book value exceeded 10% of the book value of the corporation's assets. Ingram did not identify these barges or offer evidence of Consolidated's ownership beyond a statement in an affidavit. Coast Guard records on May 19, 1988 indicated that the Consolidated companies owned only 85 barges. Materials submitted by Consolidated in addition to the affidavit supported this finding. Data submitted by Consolidated indicated that the book value of the 85 vessels was $7,758,499 as compared to all assets of $111,023,463 or approximately 7%.

Ingram also argued that Consolidated's activity in processing grain did not constitute manufacturing. The Customs Service in its administration of the Bowaters Amendment, however, in 1963 first ruled that the Bunge Corporation in processing grain by receiving, treating, cleaning, conditioning, drying, mixing, blending, and up-grading was engaged in manufacturing within the meaning of the Bowaters Amendment. The ruling was based on sound legal precedents regarding the nature of the manufacturing industry. The Customs Service until a transfer of functions in 1967 and after that time the Coast Guard have continually upheld that ruling. As recently as April 1988, the Louis Dreyfus Corporation requalified under the Bowaters Amendment as a grain processor. In Consolidated's submissions they stated they had reviewed the operations of Dreyfus and certified that Consolidated's grain operations were identical.

After a thorough review of Consolidated's affidavit, the lists of officers and directors, the supplemental data, Coast Guard records, and the allegations and evidence presented by Ingram, the Coast Guard determined that Consolidated had met the requirements of 46 U.S.C.App. 883-1 and 46 CFR Part 68 and that Certificates of Compliance should be issued. They were issued on May 19, 1988.

Ingram thereafter filed suit against the Coast Guard seeking that the Certificates of Compliance be dissolved. Ingram was successful in obtaining a Temporary Restraining Order invalidating the Certificates for a period of ten days. A preliminary injunction hearing is scheduled for May 31, 1988.

In order to ensure that Consolidated continues to be qualified under the Bowaters Amendment, the Coast Guard has commenced additional investigation into the particulars of the Consolidated companies. Demand has been made for specific evidence relating to each of the eligibility criteria. The materials must be submitted by June 15, 1988.

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